Pet. & F. Feby
407 Submitted
Jan. 6th 1880

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~711~~ 406

THE SCHOOL DISTRICT NO. 56 OF RICHARDSON COUNTY, NEBRASKA, PLAINTIFF IN ERROR,

vs.

THE ST. JOSEPH FIRE AND MARINE INSURANCE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED FEBRUARY 8, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 714.

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1 Pleas in the circuit court of the United States for the eighth judicial circuit and district of Nebraska, before Hon. John F. Dillon, judge of the circuit court of the United States for the district of Nebraska, and the Hon. Elmer S. Dundy, judge of the district court of the United States for said district, sitting in said circuit court, at the term of May, 1878.

Be it remembered, that on the 26th day of March, 1878, a petition was filed in the office of the clerk of said circuit court, of which said petition the following is a true copy of the jurisdictional clause, the first count, and the prayer of said petition:

UNITED STATES OF AMERICA,
District of Nebraska, ss:

In the circuit court of the United States for the district of Nebraska.

THE ST. JOSEPH FIRE & MARINE INSURANCE Company, a corporation, plaintiff,
versus
SCHOOL DISTRICT NUMBER FIFTY-SIX, OF Richardson County, defendant.

The plaintiff, the Saint Joseph Fire and Marine Insurance Company, for its cause of action against School District Number Fifty-six, of Richardson County, the defendant herein, states that the plaintiff is a corporation duly created, organized, and existing under and by virtue of the laws of the State of Missouri, and is a citizen of the State of Missouri, within the meaning of the Constitution and laws of the
2 United States, and its parent office is located at the city of Saint Joseph, Missouri; and that the defendant is a corporation duly created, organized, and existing under and by virtue of the laws of the State of Nebraska, and is a citizen of the State of Nebraska, within the meaning of the Constitution and the laws of the United States, and is located in the precinct of Falls City, in said county of Richardson and State of Nebraska, and under the laws of the State of Nebraska has full and complete authority to sue and may be sued in its corporate name of "School District Number Fifty-six of Richardson County," and in its corporate name may purchase and hold real estate and personal property; and that the amount in controversy in this cause exceeds the sum of five hundred dollars, and is the sum of twenty-three hundred and forty-dollars, exclusive of interest and costs.

1. And for its first cause of action the plaintiff states that the defendant, by the name and designation of "School District Number Fifty-six of Richardson County," heretofore, to wit, on the 2d day of August, A. D. 1875, at Falls City, in the county of Richardson, and State of Nebraska, by its certain writing obligatory, number 167, signed by John D. Spragins, Frederick W. Ingham, and Abraham Elwell, the then acting trustee of said "School District Number Fifty-six of Richardson County," and also by William W. Shaw, the then acting moderator, James Cameron, the then acting treasurer, and Joseph D. Gilman the then acting director of said "School District Number Fifty-six, of Richardson County," acknowledged itself indebted, and promised to pay to the bearer the sum of one hundred dollars, lawful money of the United States, on the second day of August, A. D. 1895, for value received, at the National Park Bank, in the city and State of New York, with interest thereon at the rate of ten per cent. per annum, payable annually

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2 United States, and its parent office is located at the city of Saint Joseph, Missouri; and that the defendant is a corporation duly created, organized, and existing under and by virtue of the laws of the State of Nebraska, and is a citizen of the State of Nebraska, within the meaning of the Constitution and the laws of the United States, and is located in the precinct of Falls City, in said county of Richardson and State of Nebraska, and under the laws of the State of Nebraska has full and complete authority to sue and may be sued in its corporate name of "School District Number Fifty-six of Richardson County," and in its corporate name may purchase and hold real estate and personal property; and that the amount in controversy in this cause exceeds the sum of five hundred dollars, and is the sum of twenty-three hundred and forty-dollars, exclusive of interest and costs.

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, on the second day of August of each year, on presentation at said
3 bank of the annexed coupons as they respectively become due.

That said bond, with others (in all two hundred in number), all of like date, tenor, and amount, was issued in payment for the erection of a school building and procuring a site therefor, pursuant and in conformity to a special act of the legislature of the State of Nebraska, entitled "An act authorizing school district number fifty-six, of Richardson County, to issue bonds for the purpose of erecting a school building, procuring a site therefor, and setting aside a fund to pay same," approved February 2d, 1875, and was authorized and assented to by more than a majority of the qualified electors of said school district, voting at an election duly ordered, held, and legally conducted at the court-house in Falls City, in said school district, on the 19th day of July, A. D. 1875, in relation thereto.

That said bond recites that it is issued by said school district in pursuance of and in conformity to an act of the legislature of the State of Nebraska, entitled "An act authorizing school district number fifty-six, of Richardson County, to issue bonds for the purpose of erecting a school building, procuring a site therefor, and for setting aside a fund to pay same," approved February 2d, 1875, and in further pursuance of power granted by a majority of the electors of said school district, voting at an election ordered, held, and conducted in the manner provided by law for the calling and holding of special elections in the school districts, at the court-house in said school district, on the 19th day of July, A. D. 1875, and at which election there were cast by electors of said school district ballots as follows: "For bonds, amount to be issued twenty thousand dollars," one hundredand five votes; "Against bonds," one vote; "No bonds," one vote; "For bonds and tax" (no amount stated to be issued), one vote; and to pay which bonds and the interest thereon as they mature, it was ordered by the board of trustees
4 of said school district, and a majority of the voters, as above shown, that an annual tax shall be levied on the taxable property of said school district sufficient in amount to pay the interest accruing on said bonds annually, and to constitute a sinking fund adequate to the paying off of said bonds when due.

Plaintiff further alleges that defendant has accepted the building erected and the site procured, and now occupies the same for the purposes intended, and that this plaintiff became the owner, holder, and bearer of said bond for a valuable consideration, before the maturity of any coupon thereto attached, and paid therefor an amount far in excess of eighty-five per cent. of the par value thereof.

And plaintiff states that by a certain interest coupon, numbered 1, with the name of Joseph D. Gilman, the then acting director, subscribed thereto, formerly attached to said bond and bearing even date therewith, herewith filed, the defendant promised to pay to the bearer, on the 2d day of August, 1876, ten dollars, for value received, at the National Park Bank, in the city of New York, being one year's interest on bond of said district number 167, which said coupon was duly presented at maturity at said bank and payment thereof demanded, which was refused, whereupon the same was duly protested for non-payment, and defendant was duly notified thereof; that the plaintiff is the owner, holder, and bearer of said coupon, and the same remains due and unpaid.

Wherefore an action hath accrued to the plaintiff to recover the sum of ten dollars, with interest at the rate of ten per cent. per annum from the 2d day of August, A. D. 1876.

Wherefore plaintiff asks judgment against the defendant for the sum of two thousand and three hundred and forty dollars, and ten per centum per annum interest upon three hundred and forty dollars
5 thereof from the second day of August, 1876, and upon two thousand dollars thereof from the second day of August, 1877, and its costs and protest damages in this behalf expended.

H. E. BARNARD,
Attorney for Plaintiff.

Thereupon afterwards, to wit, on the 7th day of May, 1878, a demurrer was filed in said case, in words and figures following, to wit:

Demurrer.

In U. S. circuit court, district of Nebraska.

THE ST. JOSEPH FIRE AND MARINE INSURance Company, a corporation, pl'tff,
vs.
SCHOOL DISTRICT NUMBER FIFTY SIX, OF Richardson County, def't.

And now comes the defendant and demurs to the petition of the plaintiff filed in this cause, for the following reasons:

1st. Because said petition and each and every count thereof is not sufficient in law to maintain an action.

2d. Because said petition and each and every count of the same do not state facts sufficient to constitute a cause of action against this defendant.

3d. Because this court has no jurisdiction of the subject-matter for which this suit is brought.

Wherefore def't prays judgment, &c.

By G. P. UHL,
Att'y for Def't.

(Said demurrer is endorsed as follows:) St. Joe. Fire & Marine
6 Ins. Co. vs. School Dist. 56, No. 251 D. Demurrer. Filed May 7, 1878. Watson B. Smith, clerk. By Elmer D. Frank, deputy. G. P. Uhl, att'y for def't.

Thereupon, afterwards, at the May term of said court, on the 8th day of May, 1878, the following proceedings were had, as appears of record on folio 463, journal D, of said court.

THE ST. JOSEPH FIRE AND MARINE INSURance Co.
vs.
SCHOOL DISTRICT NO. 56 OF RICHARDSON CO.

This cause came on for hearing on the motion of the defendant to strike out a part of the petition of plaintiff and was argued by counsel; whereupon it is considered by the court, the same being advised in the premises, that said motion is not well taken, and the same is denied.

On motion of said defendant, leave is granted it to demur to the petition instanter.

Thereupon, afterwards, at the said May term of said court, on the

10th day of May, 1878, the following proceedings were had, as appears of record on folio 505, journal D of said court.

THE ST. JOSEPH FIRE AND MARINE INSURANCE CO.
vs.
SCHOOL DISTRICT NO. 56 OF RICHARDSON County, Nebraska.

This cause being heard on the demurrer of the defendant to the petition of plaintiff, was argued to the court by Messrs. Uhl and Reavis in support thereof, and by H. E. Barnard, esq., in opposition thereto; the court on consideration thereof overrules the said demurrer, and
7 thereupon the defendant, not desiring to plead further, but standing on its said demurrer, the court finds upon the petition that the said defendant is indebted to the plaintiff on the coupons sued on in the sum of $2,554.70.

It is therefore considered by the court that the said plaintiff, the Saint Joseph Fire and Marine Insurance Company, recover from said defendant, School District Number Fifty-six of Richardson County, Nebraska, the said sum of $2,554.70 so found due, together with its costs herein expended.

And the judges of said court being divided in opinion on certain points, certify such division to the Supreme Court of the United States in the manner following, that is to say:

ST. JOSEPH FIRE AND MARINE INS. CO.
vs.
SCHOOL DISTRICT 56, RICHARDSON CO.

Upon the consideration of said demurrer, final judgment having been rendered thereon for the plaintiff, the opinion of the judges holding said court, namely, the circuit judge and the district judge, were opposed upon the following questions thereon arising, to wit:

1st. Whether the said act of the legislature of Nebraska, approved Feb'y 2d, 1875, recited in the bonds (the coupons of which are in suit) is in conflict with sec. 1 of art. 8 of the constitution of the State, because the same is a special act conferring corporate powers; and also whether it is in conflict with sec. 19 of art. 2 of the constitution of the State because it contains more than one subject.

2d. Whether any judgment for money can be rendered on the coupons in suit against the defendant.

8 3rd. Whether the said act of Feb'y 2d, 1875, is repealed by the act of Feb'y 25th, 1875, entitled "An act to amend an act entitled 'An act to establish a system of public instruction for the State of Nebraska.'"

And the said points being at the time stated under the direction of the said judges, it is ordered that the said points be, and they are hereby, certified to the Supreme Court of the United States according to the statutes in such case provided.

JOHN F. DILLON.
ELMER S. DUNDY.

9 Thereupon afterwards, to wit, on the 12th day of November 1878, a stipulation of facts and for transcript was filed in said case, which said stipulation of facts and for transcript is in words and figures following, to wit:

In the circuit court of the United States for the district of Nebraska.

THE SAINT JOSEPH FIRE AND MARINE INSURance Company
versus
SCHOOL DISTRICT NUMBER FIFTY-SIX OF RICHardson County, Nebraska.

It is hereby stipulated and agreed by and between the parties to this suit that Exhibit A, hereunto attached, is a true copy of bond number one and coupon No. one, attached thereto.

That there were by the defendant two hundred bonds of like tenor, date, and amount issued; and that each of said bonds had attached thereto twenty coupons of like tenor, date, and amount; that said bonds were numbered from one to two hundred, inclusive, and said coupons were numbered from one to twenty, inclusive.

That it is further agreed that the clerk of the circuit court of the United States for the district of Nebraska is authorized and instructed in preparing a transcript for the Supreme Court of the United States of America to make a true transcript of the entries upon the records of said court, the jurisdictional clause of plaintiff's petition, a copy of the first count of said petition, and the prayer of said petition, and no more of said petition; and shall certify that said petition contains two hundred and thirty-four counts, differing from the first only in number of bond and coupon.

The demurrer filed by the defendant in this cause, the judgment, the certificate of division, and this stipulation, and Exhibit A, and the above shall be received and treated by the Supreme Court of the United States as if a complete transcript of the plaintiff's petition were embodied therein without any objection by either party to this cause.

H. E. BARNARD,
Att'y for Plaintiff.
SCHOOL DISTRICT NO. 56, RICHARDSON COUNTY, NEBRASKA,
By GEO. P. UHL AND ISHAM REAVIS,
Its Att'ys of Record.

Attached to said stipulation is Exhibit A, in words and figures following, to wit:

EXHIBIT A.

UNITED STATES OF AMERICA,
State of Nebraska:

RICHARDSON COUNTY DISTRICT SCHOOL BOND OF FALLS CITY.

Number 1. Amount, $100. School district number 56.

Know all men by these presents that Falls City School District Number Fifty-six, in the county of Richardson, State of Nebraska, is indebted to and promises to pay the bearer the sum of one hundred dollars, lawful money of the United States, on the second day of August, A. D. 1895, for value received, at the National Park Bank in the city and State of New York, with the interest thereon at the rate of ten per cent. per annum, payable annually, on the second day of August of

each year, on presentation at said bank of the annexed coupons as they respectively become due.

This bond is one of two hundred, numbered from one to two hundred, both numbers inclusive, all of like date, tenor, and amount, and issued by said school district in pursuance of and conformity to an act
11 of the legislature of the State of Nebraska, entitled "An act authorizing School District No. 56 of Richardson County to issue bonds for the purpose of erecting a school building, procuring a site therefor, and for setting aside a fund to pay same," approved February 2nd, 1875, and in further pursuance of power granted by a majority vote of the electors of said school district voting at an election ordered, held, and conducted in the same manner provided by law for the calling and holding of special elections in the school districts, at the court-house in Falls City, in said school district, on the 19th day of July, A. D. 1875.

And at which election there were cast by electors of said school district ballots as follows: "For bonds, amount to be issued, twenty thousand dollars," one hundred and five votes; "Against bonds," one vote; "No bonds," one vote; "For bonds and tax," no amount stated to be issued, one vote; and to pay which bonds and the interest thereon as they mature, it was ordered by the board of trustees of said school district and a majority of the voters, as above shown, that an annual tax shall be levied on the taxable property of said school district sufficient in amount to pay the interest accruing on said bonds annually, and to constitute a sinking fund adequate to the paying off of said bonds when due.

In testimony whereof the school district board of trustees of said Falls City school district No. 56 have caused this bond to be signed by their moderator, treasurer, trustees, and director, and the 20 coupons hereto attached, for ten dollars each, to be attested by the signature of the director of said board, at Falls City, in the county of Richardson, State of Nebraska, this 2nd day of August, A. D. 1875.

JOHN D. SPRAGINS,
FREDERICK W. INGHAM,
ABRAHAM ELWELL,
Trustees.

WM. SHAW,
Moderator.

JAMES CAMERON,
Treasurer.

JOSEPH D. GILMAN,
Director.

12 School district No. 56, in Richardson County, Nebraska, will pay to bearer, on the 2nd day of August, 1895, ten dollars, for value received, at the National Park Bank, in the city of New York, being one year's interest on bond of said district.

Falls City, August 2nd, 1875.

No. 1.

JOSEPH D. FILMAN,
Director.

(Upon the back of said stipulation appear endorsements in words and figures following, to wit:) No. 251 D. In the circuit court of the United States for the district of Nebraska. St. Joseph Fire and Marine Insurance Co. versus School District No. Fifty-six of Richardson County, Nebraska. Stipulation of facts and for transcript. Filed Nov. 12, 1878. Watson B. Smith, clerk.

Thereupon, afterwards, a writ of error was allowed and a citation issued in said case, of which the following are the original copies:

13 UNITED STATES OF AMERICA,
District of Nebraska, ss:

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Nebraska, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between the St. Joseph Fire & Marine Insurance Company, a corporation, plaintiff, and School District Number Fifty six of Richardson County, Nebraska, defendant, a manifest error hath happened, to the great damage of the said defendant in the said cause, as by its complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States shall be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, at Omaha, in said district, this 19th day of December, 1878.

WATSON B. SMITH, *Clerk.*

Allowed by—

JOHN F. DILLON, *Judge.*

(Indorsed:) No. . United States circuit court, district of Nebraska. St. Joseph Fire and Marine Insurance Co. vs. School District No. 56 of Richardson Co., Neb. Writ of error. Filed January 2, 1879. Watson B. Smith, clerk.

14 THE UNITED STATES OF AMERICA,
District of Nebraska, ss;

To the St. Joseph Fire and Marine Insurance Company, a corporation, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein School District No. 56 of *of* Richardson County is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgement rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 19th day of December, 1878.

JOHN F. DILLON, *Judge.*

I hereby accept service of the within citation this 15th day of January, 1879.

H. BARNARD,
Attorney for the St. Joseph Fire & Marine Ins. Co.

(Indorsed:) No. . United States circuit court, district of Nebraska. St. Joseph Fire & Marine Insurance Company vs. School District ℔ 56 of Richardson Co., Neb. Citation. Filed Jan'y 17th, 1879. Watson B. Smith, clerk.

15 Thereupon afterwards, on the 2nd day of January, 1879, a bond was filed in said case, which said bond is in words and figures following, to wit:

Know all men by these presents that we, Edwin S. Towle and George A. Bell, are held and firmly bound unto the Saint Joseph Fire and Marine Insurance Company, a corporation, in the full and just sum of five hundred dollars, to be paid to the said the Saint Joseph Fire and Marine Insurance Company, a corporation, its certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals, and dated this 30th day of December, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately, at a circuit court of the United States for the district of Nebraska, in a suit depending in said court, between the Saint Joseph Fire and Marine Insurance Company and School District No. 56 of Richardson County, judgment was rendered against the said school district No. 56, of Richardson County, upon a devision of opinion of the judges of said court, and the said school district No. 56, of Richardson County, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said the Saint Joseph Fire and Marine Insurance Company, a corporation, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next:

Now the condition of the above obligation is such, that if the
16 said school district No. 56, of Richardson County, shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

EDWIN S. TOWLE.
GEO. A. BELL.

Approved by—

JOHN F. DILLON,
Judge.

(Said bond is endorsed as follows:) United States circuit court, district of Nebraska. St. Joseph Fire and Marine Insurance Co. vs. School District No. 56 of Richardson Co., Neb. Bond. Filed January 2nd, 1879. Watson B. Smith, clerk.

UNITED STATES OF AMERICA,
District of Nebraska, ss:

I, Watson B. Smith, clerk of the circuit court of the United States for said district of Nebraska, within the eighth circuit, do hereby certify that the foregoing folios from one to sixteen contain true and faithful tran-

scripts from the records and files of said court in the case of the St. Joseph Fire and Marine Insurance Company vs. School District number fifty-six of Richardson County, Nebraska, and that a copy of the writ of error and citation has been lodged and remains in my office.

I further certify that the petition of said plaintiff contains two hundred and thirty-four counts, differing from the first only in number of bond and coupon.

Witness my hand and the seal of said court, at Omaha, Nebraska, this fourth day of February, A. D. 1879.

[SEAL.] WATSON B. SMITH, *Clerk.*

17 *Assignments of error.*

In the Supreme Court of the United States.

School District No. 56 of

RICHARDSON COUNTY, ~~A CORPORATION~~, PL'T'FF in error,
vs.
THE ST. JOSEPH FIRE AND MARINE INSURANCE Company, a corporation, def't in error.

The pl't'ff in error would respectfully show to the honorable Supreme Court of the United States that the above-named def't in error, The St. Joseph Fire and Marine Insurance Company, did on the 26th day of March, 1878, begin an action in the circuit court of the United States for the district of Nebraska, wherein said defendant in error was plaintiff, and the above-named pl't'ff in error, School District No. 56, of Richardson County, Nebraska, was defendant; and in said action this def't in error, pl't'ff below, did file a petition on the date above stated, to which petition pl't'ff in error, def't below, did, on the 7th day of May, 1878, by leave of court, file a demurrer for certain reasons therein stated; and that at the May term of the said circuit court for the district of Nebraska, of the year 1878, the said matter came on for hearing upon the demurrer of this pl't'ff in error, def't below, to the
18 petition filed herein by def't in error, pl't'ff below; and the said circuit court being then in session, the Hon. John F. Dillon, judge of the circuit court of the United States of and for the eighth judicial circuit, presiding, and the Hon. Elmer S. Dundy, district judge of the United States for the district of Nebraska, associate judge of said circuit court, being present, the opinion of said judges being opposed on the several questions submitted to said circuit court, and the said circuit judge being of the opinion that the demurrer should be overruled, and the district judge being of the opinion that the demurrer should be sustained, the said judges were opposed in opinion upon the points particularly stated in the certificate of division contained in the record herewith submitted.

And pl't'ff in error avers that the said circuit judge erred in his rulings and in his opinion upon the issues joined upon the demurrer to the pl't'ff's petition in said circuit court, in this, viz:

1st. In holding that the demurrer should be overruled.

2d. In overruling the demurrer and rendering judgement in favor of the plaintiff below, defendant in error herein.

19 3d. In not sustaining the demurrer of this pl't'ff in error, def't below, to said petition.

4th. In not sustaining the demurrer upon the several points in which the opinions of the said circuit judge and the district judge were opposed.

And the opinion of the said circuit judge prevailing upon said matter and points in issue, and being against this pl't'ff in error, def't below, judgement was rendered against this pl't'ff in error in said circuit court, to its great prejudice and injury.

Wherefore this pl't'ff in error prays that this honorable court may review the matters and rulings of said circuit judge upon the issues and matters and issues of law contained in said certificate of division herewith submitted; and that the judgement rendered against this pl't'ff in error be reversed, and that this pl't'ff in error be restored to all it has lost by reason of the errors contained in the rulings of said circuit judge.

E. ESTABROOK,
Att'y for Pl't'ff in Error.

(Indorsed:) School Dist. No. 56, Richardson County, pl't'ff in error, vs. The St. Joseph Fire & Marine Insurance Company, a corporation, def'ts in error. No. 1078. Assignment of error. E. Estabrook, att'y for def't in error.

(Indorsement on cover:) No. 714. The School District No. 56, of Richardson County, plaintiff in error, vs. The St. Joseph Fire and Marine Insurance Company. Nebraska C. C. U. S. Filed 8th February, 1879.

In the Supreme Court

OF

THE UNITED STATES.

SCHOOL DISTRICT NO. 56 OF RICHARDSON COUNTY
Plaintiff in Error.

VS.

THE ST. JOSEPH FIRE AND MARINE INSURANCE CO.
Defendant in Error.

ARGUMENT,

SUBMITTED BY

E. ESTERBROOK, Attorney.

GEO. P. UHL,

OF COUNSEL FOR PLAINTIFF IN ERROR.

In the Supreme Court

OF

THE UNITED STATES.

SCHOOL DISTRICT NO. 56 OF RICHARDSON COUNTY
Plaintiff in Error.

VS.

THE ST. JOSEPH FIRE AND MARINE INSURANCE CO.
Defendant in Error.

ARGUMENT.

This is an action founded upon 234 coupons, attached to certain bonds issued by the trustees of the plaintiff in error, under an act as alledged in the petition of plaintiff below, defendant in error herein, passed by the Legislature of Nebraska, on the 2d day of February, 1875, found on pages 281, 282 and 283 of the session laws of Nebraska, of the year 1875.

The petition, and each and every count thereof, contains the recitals of the bonds and refers to the act above cited by its title and date, so that any person who happens to see the bond and reads it will at once see that it was issued in pursuance of

the above cited act, and is consequently chargeable with notice of all the infirmities attending the passage and constitutionality of the act as well as the issuing of the bonds thereunder.

To the petition of the plaintiff below, defendant in error herein the defendant below, plaintiff in error, herein filed a general demurrer, and rested the demurrer upon the following grounds, viz :

First. Because the act under which the bonds were alleged in the petition to have been issued was in conflict with section 19, article 2 of the Constitution of Nebraska.

Second. Because the act was in conflict with section 1, of article 8, of the Constitution of Nebraska.

Third. Because under the provision of the act, if the court should hold that it was not in conflict with the constitution, the plaintiff could not obtain a general judgment but would have to rely upon the fund provided for by the act, and

Fourth. That the act was repealed by a statute subsequently passed by the same legislature, and before the bonds (the coupons of which this suit was brought on) were issued.

Upon the questions thus presented the judges of the circuit court were opposed in their opinions, the circuit judge holding that the act in question was not subject to those objections, while the district judge held that it was subject to all of the above stated objections. And the plaintiff in error contends that the circuit judge erred in his ruling and in his opinion, and that the district judge was right in his opinion and that the opinion of the district judge is the law and ought to prevail in this cause.

The plaintiff in error contends that it is by virtue of the laws of the State of Nebraska, General Statutes of Nebraska, page 962, section 2, an *incorporation*, and as such, entitled to all the rights and privileges granted to corporations under the constitution of Nebraska, and subject to all the restrictions imposed upon corporations by said constitution, and that it is not liable otherwise than as provided by the constitution and laws of the State of Nebraska, and that no bond or other evidence of indebtedness is binding upon it unless issued in persuance of some *valid law* of the State of Nebraska, and that before the defendant in error, plaintiff below, can obtain a judgment against this plaintiff in error, defendant below, upon any evidence of indebtedness, they must first show that such evidence of indebtedness was issued in pursuance of some valid and binding law, and if such evidence of indebtedness purports upon its face to have been issued in accordance with some particular law and refers to such particular law in plain and unmistakable terms then no other law will in anywise aid the

holder of such an instrument, and that if such particular law is void or inoperative at the time the bonds were issued, then the holders of them are chargeable with full notice, and the bonds will be void in their hands however innocent they may have been in buying them. McClure vs. Township of Oxford, 94 U. S. page 428. The town of South Otowa vs. Perkins, same report, page 260.

The plaintiff in error contends that the act under which the bonds were issued, which is recited in the petition is in conflict with section 19, article 2, of the Constitution of Nebraska in force at the time the act was passed. Section 19 of article 2, General Statute, page 56, provided among other things that "no bill shall contain more than one subject, which shall be *clearly* expressed in its title; and no law shall be revived or amended, unless the new act contains the entire act revived, and the sections amended, and the section or sections so amended shall be repealed." The title of this act, is "an act authorizing School District number fifty-six, of Richardson County, to issue bonds for the purpose of erecting a shool building, procuring a site therefore, and for setting aside a fund to pay the same." It is easily seen that the title to this act has three different and distinct subjects, viz: "First to authorize the district to issue bonds for the erection of a school house. Second, to procure a site for a school house, and Third, to set asid a fund to pay the bonds." While under a strained construction, which courts seldom ever indulge in, the third subject might be hitched on to the first as a kind of an addition or side-show, there is no possible construction consistent with reason, which can assimilate the second with either the first or third, and it is therefore certainly double. But when we come to the act it is at variance with its title. The title apparently authorizes the district to issue the bonds, whereas the act itself only authorizes "*the school district board of trustees of Falls City School District number fifty-six*," to issue the bonds and then places the house to be built, under the "entire control and management of the school board of district number fifty-six," of which provisions there is nothing whatever indicated by the title. The Supreme Court of Nebraska has invariably and without wavering, held such act to be unconstitutional. See Smails vs. White, 4 Nebraska 353, and city of Tecumseh vs. Phillips, 5 Nebraska 305; White vs. city of Lincoln, 5 Nebraska 505.

But again the plaintiff in error is a common school district, as provided by the common school laws of Nebraska. See General Statute of Nebraska, page 960 to 981, and as such is a corporation, by section 2 of said act, and in its said capacity can *only keep and maintain a common school* and can *only*

build a common school house, whereas by the act the "school district board of trustees are authorized to expend the money realized from a sale of the bonds for the purpose of *erecting a* HIGH SCHOOL. If this act should be deemed valid under the above constitutional provision, it would confer greater powers upon school district fifty-six of Richardson County than upon any other school district in the State, and the act would necessarily be amendatory of the school laws of Nebraska, without in any manner referring to said law, and the Supreme Court of Nebraska, in the case of Smails vs. White, 4 Nebraska 353, has distinctly and clearly held that such an act is void.

Again the license laws of Nebraska, page 852, General Statute. for the lincense and retail sale of liquor provide for paying all such lincense moneys into the county treasury for the use of the school fund, and in the case of City of Tecumseh vs. Phillips, 5 Nebraska 305, and White vs City of Lincoln 5 Nebrask 505, the Suprems Court of Nebraska held an act void because it attempted to divert the license money from the channel provided for in the general law, because it was to that extent amendatory of the general law, and the amendment was not expressed in the title. Likewise in Sovereign vs. the State, 7 Nebraska 409, the legislature had passed an act to prohibit the killing of certain birds, the court held the act void, because it was amendatory of certain sections of the criminal code of Nebraska without expressing the amendatory character in the title. The courts of Nebraska have been unwaivering in declaring acts void which were not in strict conformity to section 19, article 2, of the constitution, and we claim that the act provides no other money to pay the bonds and interest than that which arises from licenses, fines and penalties, within the city of Falls City, and to that extent diverts those funds from the common school funds of Richardson County, without expressing any such intent in the title of the act, and that the act is therefore necessarily amendatory of the license law above cited. and is void under decission above cited in 5 Nebraska 305, and 505.

Again under the school law of Nebraska, page 966, General Statute, section 29 to 36, the district itself has absolute power to control and manage by vote of a majority at a school meeting the school house site, and other property belonging to the district, and the district board can only act according to the directions given by such a district meeting, and the district board can only do certain particular things when the meeting fails to make the proper provisions. By section 5 of the act under which the bonds are alleged to have been and were issued, the high school provided for therein is placed under the *entire control and management of the school board of district number*

fifty-six and the district itself has nothing whatever to say about it. In fact the if law should be regarded as valid, the district board can sell the building, site and all and pass a good title, and the district itself has nothing to say about it, and has no power or authority to interpose any objection whatever. If this law should be held binding upon this plaintiff in error, then its board of trustees has powers additional to those conferred by the general law last above cited, and is necessarily amendatory of those sections, and under the decissions above cited in 5 Nebraska 305 and 505 is unconstitutional and void.

And fuather the act under which the bonds are alleged to have been and were issued the coupons of which bonds are in suit herein, nowhere provides that the district (the plaintiff in error) shall have any power to issue bonds, nowhere provides that they shall have anything to say about the bonds, further than by a vote to state how much the trustees may issue. It nowhere provides that the district shall have anything to say about the sale of the bonds and expressly provides that the district *shall have no interest in or control over the building when built.* It simply authorizes the school board of trustees of that date to issue these bonds, erect the *High School*, and then control and manage it independant of and wholly outside of this plaintiff in error. The entire spirit of the act is to authorize the board of trustees (and not this plaintiff in error) to issue these bonds and nowhere authorizes the district to issue them. Both the words and spirit of the act are therefore wholly at varience with the *title* of the act and are in no manner *expressed in the title*, and for that further reason the act is clearly in conflict with section 19, article 2, of the constitution of Nebraska, and it is utterly void, and no *power or authority* was ever given by the legislature of Nebraska under that act to issue any bonds or coupons, and if any were ever issued they are void, according to the discision of this and every other court.

SECOND.

Again the plaintiff in error contends that it is a corporation as alleged in plaintiff's (defendant in error) petition under and by virtue of the laws of the State of Nebraska, General Statute, page 962, section 2, and that the constitution of Nebraska in force at the date when the law under which the bonds (the coupons of which are here in suit) are alleged to have been and were issued in section 1, of article 8, General Statute, page 64, provides that the legislature shall pass no special act conferring corporate power." The act under which the bonds

are alleged to have been and were issued is alleged to be a special act. That it is a special act there can be no doubt, for it confines its operation and effect to one locality only. The evident intent of the constitutional restriction above cited was to prevent the legislature from passing acts which would affect only one particular corporation or locality, so that every act which would ever be passed under that constitutional provision would have to effect alike all corporations of whatever kind throughout the entire State, so that each representative in the legislature and his constituents would be affected alike by its provisions, and by that means secure a more thorough inquiry into the provisions of the act and a more serious consideration of the same by every member of the legislature. The beneficent effect of such a restriction is easily seen. It is evidently intended to prevent one legislature from passing laws by which one, two, three or even a dozen localities are loaded down with bonds, or other liabilities, and the next legislature pass laws by which another dozen is loaded down with debts, and so on until in a few years the corporate bodies which collectively constitute the entire State, are so burdened and submerged with debts which they never will be able to discharge, and thus by piecemeal affect what never could have been done by a general law, for it must be admitted that legislators are but men, and so long as the provisions of an act do not effect him individually or his immediate locality, a passing thought is about all that he will give it. The evil effects of special laws conferring corporate power are but too sadly felt in all those States where power to pass them exists, and to prevent these abuses, and to compel the evil or good effects of a law to be equally applicable to all parts of the State and upon every corporation within the State, and to compel the earnest and sincere consideration of every act conferring corporate power by every member of the legislature was the direct object of that section.

The constitution of the State of Ohio, by section of article is almost verbatim like that of Nebraska, and the supreme court in the case of State Ex. Rel. vs. Cincinnati, 20 Ohio State Report, page 18; and in the case of Atkinson vs. M.&C.R.R. etc., 15 Ohio State, page 21, has given that constitutional provision, a construction, and in each of those cases hold that the legislature cannot pass a special act conferring corporate power, and in State vs. Cincinnati, says Brinkerhoff C. J. on page 36, "I think the following proposition to be impregnable. First. The general assembly cannot by special act create a corporation.

Second. It cannot, by special act, confer additional power upon corporations already existing.

Third. In the purview of these propositions and of the constitutional provisions on which they are based, there is no distinction between private and municipal corporations." This construction of the constitution of Ohio, by the court of Ohio, is under the general rule of construction binding upon Nebraska, for the constitutional provison of Nebraska above referred to was borrowed from that of Ohio and is in the same identical words, except in the constitution of Nebraska the word "legislature" is used instead of "general assembly" used in that of Ohio, but the meaning of the two terms is exactly the same, when we consider that the words "general assembly" in Ohio signifies the same thing as the word "legislature" in Nebraska and the Supreme Court of Nebraska in the cause of Robert Clegg vs. School District Number 56, of Richardson County (his plaintiff in error) which was an action brought by Clegg against this plaintiff in error upon *coupon number one, of bond number* 166 *of these very bonds* has held that this very act by virtue of which the bonds are alleged to have been and were issued, the coupons of which bonds are in suit herein, was repugnant to section 1, of article 8, of the constitution of Nebraska, in force at the time the act was passed, and further held that the school district, this plaintiff in error, had no authority under and by virtue of said act to issue any bonds, and that the bonds and coupons were void. Thus holding directly that the constitutional provision above referred to applies to this plaintiff in error and that the bonds and coupons here in suit are void. With such a construction of the act under which the bonds and coupons here in suit were issued it would seem useless to say anything further. It would be a singular state of affairs if an act of the legislature of the State of Nebraska was declared to be void by the highest court of Nebraska by reason of its repugnance to the constitution of Nebraska, and therefore wholly void within the State of Nebraska, and such act yet be valid in the State of Missouri where the defendant in error alleges it resides, for that constitutional provision is plain and unambiguous, and the defendant in error certainly knew that this plaintiff in error is a *corporation*, for it is so stated and alleged in the petition, and those constitutional provisions are presumed to be known all over the world, and therefore to the defendant in error. And an act of the legislature of any State repugnant to the constitution of such State is wholly void and confers no rights or power whatever. Cooley on constitutional legislation, page 188, and is the same as if no law had ever been passed. And it certainly cannot be claimed that in the absence of any law giving the *power* and *authorizing the issuing* of bonds that such bond will be binding upon a public

corporation, they have invarably, both by this and every other court within the United States, been held to be void and worthless unless the authorities issuing them has the lawful and statutory power to issue them. In the town of South Ottowa vs. Perkins, 94, U. S. Mr. Justice Bradly, on page 267, lays down the following as the rule governing decisions in the courts of the United States, viz: "It is declared by the judiciary act as a fundamental principle, that the laws of the several States, except where the constitution treatics or Statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in courts of the United States in cases where they apply," and in the same case on page 268 he further says, "as a matter of propriety and right, the decision of the State courts on the question as to what are the laws of the State is bidding upon those of the United States." From these propositions this court has never varied, and has always held the construction of the State court upon the constitutionality of a statute of paramount authority. We have therefore, under all the decisions of this court, and the principles above stated, reason to regard the decision of the Supreme Court of the State of Nebraska, in the case of Clegg vs. school district number fifty-six, (this plaintiff in error,) upon the constitution of Nebraska, and upon the law under which the bonds, the coupons of which are here in suit, were issued as final and decisive of this cause. The decision of the Supreme Court of Nebraska having just been rendered, it is yet in manuscript form, a copy thereof is therefore attached to this argument and a certified copy filed with the papers herein. That the constitutional provision to-wit: Section 1 of article 8, applies to this plaintiff in error, there can be no room to doubt under the Nebraska decision above referred to and hereto attached. Nor can we see any reason why it should not apply. and therefore submit this part of the argument without further comment.

THIRD.

The plaintiff in error further insists that even if said special act, under which the bonds are, in the petition, alleged to have been and were issued, were not obnoxious to the constitutional provisions above referred to, (and plaintiff in error *insists* that it is repugnant to *each* of those constitutional provisions) that still the Circuit Judge erred in overruling the demurrer, for if the act were not repugnant to those constitutional provisions, it of itself provides for a fund out of which the bonds and interest were to be paid, viz: By section 4 of the special act,

"all fines, penalties, forfeitures, license monies, &c., imposed and collected under the ordinances of Falls City are to be turned over to board of trustees." It never was contemplated that any tax should be levied to pay either the principal or interest of those bonds. Nothing whatever was to be applied to the payment of those bonds and interest but the fines, penalties, forfeitures and license monies of Falls City, and we contend that a recital in a bond that a "tax should be levied to pay the bonds and interest," would certainly in the absence of a law authorizing such tax not aid the holder of the bonds or coupons. Besides when the legislature of a State set aside a special fund to pay a particular indebtedness, and make no other provision to pay such particular indebtedness, the holder of such particular indebtedness has no right to any other fund. Dillon, Municipal corporation, section 413 and authorities cited; Commissioners vs. Cox 6 Indiana, 403; Commissioners vs. Mason, 9 Indiana 97, and the holder of such particular indebtedness cannot have a general judgment against the corporation, but must resort to the remedy of mandamus to compell the application of such special fund to the payment of such particular indebtedness. High on Ex. Rem., sections, 112, 357, to 359. State vs. Justices of Bolinger Co. 48 Missouri 475. Such being our view of the law upon that particular point, and if we are right, the circuit Judge most certainly erred in overruling the demurrer and rendering a general judgment against the defendant.

FOURTH.

It will be seen by reference to the opinion of the Supreme Court of Nebraska, in the case of Clegg vs. this plaintiff in error, that the court refers to two general acts passed by the legislature of Nebraska February 25, 1875. The two acts referred to by the Supreme Court of Nebraska will be found beginning, the first on page 118 the second on page 208 of the session laws of Nebraska of 1875. As to the second law it will be seen by reference to the last proviso in section 33, on page 218 of said session law that the same does not apply to Falls City. The attention of the Supreme Court of Nebraska, was not called to that proviso, and therefore perhaps escaped their notice, so that by the provisions of the act itself, it could not apply to the bonds, the coupons of which are here in suit. As to the first act, without saying anything about the constitutional objections which might properly be urged, it will be seen from the recitals in a copy of one of those bonds, they being all alike and two hundred in number, that these bonds,

the coupons of which are here in suit were not issued in pursuance of that act. This differs in title and date of its passage from the act of February 2d, 1875, besides the petition of defendant in error, plaintiff below, expressly alleges that the bonds were "issued in payment for the erection of a school building, and procuring a site therefore *pursuant and in conformity* to *a* SPECIAL ACT *of the legislature of the State of Nebraska, entitled* AN ACT AUTHORIZING SCHOOL DISTRICT NUMBER FIFTY-SIX, OF RICHARDSON COUNTY, TO ISSUE BONDS FOR THE PURPOSE OF ERECTING A SCHOOL BUILDING, PROCURING A SITE THEREFORE, AND FOR SETTING ASIDE A FUND TO PAY THE SAME. APPROVED FEBRUARY 2D, 1875." This allegation occurs twice in each and every count of the petition, once as a direct charge and allegation of *fact;* the next as showing the recital in each and every one of the bonds. It would therefore appear beyond doubt, and in fact there is no controversy but that the bonds, the coupons of which are here in suit, were issued in pursuance of the act of February 2d, 1875, found on page 281, session laws of Nebraska 1875. This being the case and the defendant in error asking judgment in pursuance of said act of February 2d, 1875, the court can give no greater relief, at law, than that asked, and the defendant in error, plaintiff below, will have to stand or fall by the act of February 2d, 1875. The general law first above referred to, it is insisted that if it have any force whatever and any bearing at all upon the act of February 2d, 1875. that by implication it will repeal that act of February 2d, 1875. under which the bonds were issued, the coupons of which are here in suit. See Casey vs. Haned, 5 Iowa 1, and 8 Iowa page 394, for we contend that the passing of a general law upon the same subject subsequent to the passing of a special law by implication repeals the special law.

A few more general remarks upon this subject and we shall leave it to the consideration of the court. The cause of Clegg vs. this plaintiff in error, arose in the following manner: Mr. Clegg had by purchase become the owner of coupon number 1, of bond number 166 of these very bonds, and the time it should have been paid having expired, he demanded payment of the treasurer of this plaintiff in error, which was refused, thereupon on the 9th day of June, 1877, Clegg brought suit against this plaintiff in error, upon said coupon, before a Justice of the Peace of Richardson County Nebraska, and on the 21st day of June, 1877, recovered judgment for the amount of said coupon and interest. From this judgment, this plaintiff in error appealed to the district court of said county, where Clegg demurred to the answer of this plaintiff in error, setting up the unconstitutionality of said act of February 2d, 1875, which demurrer of said Clegg was at the March term 1878 of said

ccurt overruled and exceptions duly noted, and judgment was rendered, dismissing the cause from this judgment, Clegg appealed to the Supreme Court, and the decision of that court has just been rendered and a copy of the opinion hereto attached. It will thus be seen that while the case of Clegg vs. this plaiutiff in error was pending in the State Courts of Nebraska, this defendant in error brought its *suit* in the United States Court for the district of Nebraska upon other coupons of the same set of bonds, issued under the same law and of the same force and effect and no greater or less force, for if this suit had been brought in the State Court of the State of Nebraska it must have shared the same fate as the case of Clegg against this plaintiff in error. And the result of that case being clearly shown by the opinion hereto attached, we contend that that opinion ought to be decisive of this cause.

The defendant in error, plaintiff below, in its petition alleges "that defendant (meaning this plaintiff in error) has accepted the building erected and the site procured and now occupies the same for the purpose intended." This allegation indefinite as it is, in not stating what funds paid for such site or building, can only be intended to show a kind of equitable right to recover, but we know of no rule of evidence or pleading by which the fact as to whether this plaintiff in error, has accepted any site or building and occupies the same, can be made an issue in a cause of this nature. The defendant in error claims to be an innocent purchaser of the bonds, the coupons of which are here in suit. And whether this plaintiff in error was benefitted to the extent of one cent on the dollar, or two dollars for every one dollar of the bonds, or whether it was actually injured by the bonds is not a question of inquiry. If it were an open question of fact to be tried by a jury upon evidence, the plaintiff in error, we presume, can make a showing of fact much stronger to defeat the bonds than the plaintiff imagines. We contend that the only question in a cause like this, is one of law, viz: "Was the corporation (this plaintiff in error) empowered by a valid law to issue these bonds. If it was so empowered all such inquiries are cut out, if it was not so empowered such averments can never aid a pleader, but the bonds or coupons must fall regardless of all such rhetorical plumage. The defendant in such a cause might deny acceptance, and occupation, but such denial would be stricken out on motion, and if no motion were filed to stike it out, there is no court that would allow evidence under such denial to be given. The averment can therefore be regarded as a matter of euphony only to mellow the sound of an otherwise stale petition. The plaintiff in error insists that the act of February 2d, is utterly void for the reasons herein contended for, and

that the circuit judge erred in overruling the demurrer of this plaintiff in error, to the petition and rendering judgment in favor of the defendant in error, and that such judgment should of right be reversed and vacated, and the case dismissed.

All of which is most respectfully submitted by

SCHOOL DISTRICT NUMBER 56,
Of Richardson County, Nebraska.

The following is a copy of the opinion of the Supreme Court of Nebraska, in the case of Robert Clegg vs. School District number 56, of Richardson County, Nebraska, referred to in this argument:

SUPREME COURT OF NEBRASKA, January Term, 1879.

Be it remembered, that at a term of the Supreme Court of the State of Nebraska, begun and held at Lincoln, on the seventh day of January, 1879.

Present: The Honorable Samuel Maxwell, Chief Justice, Hon. George B. Lake and Hon. Amasa Cobb, Judges. Guy A. Brown, Clerk.

The following among other proceedings were had and done in said court, and entered of record, to-wit:

ROBERT CLEGG, Plaintiff in Error,
vs.
SCHOOL DISTRICT No. 56, OF RICHARDSON COUNTY, Defendant in Error.
} OPINION.

COBB, J.

This action was brought for the contents of a coupon or interest warrant cut from one of the bonds issued and sold by the defendant, School District Number 56 in Richardson County, under the provisions of an act of the legislature, approved February 2, 1875, entitled an act authorizing school district number 56, of Richardson County, to issue bonds for the purpose of erecting a school building, procuring a site therefor, and setting aside funds to pay the same. The defendant by answer set up several grounds of defense to which the plaintiff demurred. The district court overruled the demurrer and rendered judgment in favor of the defendant. The plaintiff brings the case to this court by petition in error. The points are presented by stipulation. The first and principal one, and the only one which it is deemed necessary to pass upon is as to the constitutionality of the said act of the legislature under which the said bonds and coupon were issued. Section 1, of

article 8, of the constitution then in force is as follows: "The legislature shall pass no special act conferring corporate powers."

It cannot be doubted that the act in question is a special act. It relates exclusively to school district number 56, in Richardson County, none of its provisions apply or are intended to apply to any other district or subdivison of the State or the people thereof. It was published only as a special law.

It is equally clear that the powers intended to be conferred by said act, that of issuing bonds, to be binding upon, and the principal and interest thereof to be paid by the said district are corporate powers within the meaning of the said section of the constitution.

It was evidently the intention of the framers of the constitution to put an end to an universally admitted, and then growing evil, that of local and special legislation, in all cases where the beneficial results of such legislation could be reached by general laws, and they thereby adopted a policy which it is the duty of this court to uphold.

The said act of February 2, 1875, being clearly repugnant to the above quoted provision of the constitution, conferred no power on the district to issue bonds; their issue by it was *ultra vires* and the coupon sued on is void.

The record in this case does not contain the data necessary to enable this court to determine whether the said district was or was not authorized to issue the said bonds under the provisions of either of the two general acts approved February 25, 1875, and as the plaintiff alleges in his petition that the coupon sued on was issued under and by virtue of the act of February 2, the provisions of neither of the first named acts are considered.

The judgment of the district court is affirmed.

STATE OF NEBRASKA, ss.

I, Guy A. Brown, Clerk of the Supreme Court of the State, do hereby certify that the above is a true, correct and complete copy of the opinion filed in the cause therein entitled as the same appears of record in my office.

In testimony whereof, I have hereunto set my hand and the seal of said court, this 13th day of January, A. D. 1879.

GUY A. BROWN, Clerk.

REPLY TO THE

Argument of Defendant in Error.

The argument of the Plaintiff in Error was prepared, and a copy furnished to the Defendant in Error about the middle of January, 1879, and the argument of Defendant in Error has, as we understand, but just been printed, and a copy of the same furnished to us on the 18th day of December, 1879, thus giving to Defendant in Error and its able counsel nearly a whole year to meet the arguments of Plaintiff in Error. And inasmuch as the argument of the Defendant in Error seems to us to misconceive the Statues and decisions of Nebraska, we deem it but proper to ask the privilege of submitting a short reply to the argument of the Defendant in Error, or rather to that portion wherein the argument appears to us to misconceive the laws of Nebraska. *And first*--In the 3d point of the argument of Defendant in Error, Counsel for Defendant in Error indulge in what we regard a little unwarrantable criticism upon the case of Clegg vs. this Plaintiff in Error (8 Neb. 178), and cast quite a reflection upon the Supreme Court of Nebraska, by intimating that the Supreme Court of Nebraska goes with the side which has the "money" A similar reflection seems to have been cast upon the Supreme Court of Illinois in the case of Township of East Oakland vs Skinner, 94 U. S. p 255, wherein this court directed the parties to attack that decision in the Court upon which they were casting their reflections. The

Courts of Nebraska are open to all. The Clegg case was begun nearly a year before this cause was begun, and Defendant in Error knew every step taken and had an agent present to watch the progress of the cause, and actually at one time filed an application to become a party to the cause, and then withdrew its appearance. Under such circumstance it appears to us to come with bad grace to criticize the decision which they might themselves have changed, if, as intimated in the argument of Defendant in Error, "money would do it." Defendant in Error refers to the case of Commissioners of Jefferson County vs People, 5 Neb. 127, to show that the Supreme Court of Nebraska has upheld "Special laws." That case has no bearing whatever upon this cause, for the reason that the act in that cause conferred no "*power*" but simply authorized a change of evidences of indebtedness, which, as stated in the opinion, were admitted to be legal and binding. The Constitution of Nebraska of 1866, which governs the act referred to in the bonds in this cause, does not prohibit all special laws, but only prohibits such as confer *Corporate Power*. And we understand the rule of construction of Constitutions to be that Congress can pass such laws *only* as are authorized by *express or implied provisions* of the Constitution of the United States, whereas the Legislature of a State may pass all laws not *prohibited* by the Constitution of such State. In other words, Congress can only pass laws *within the provisions* of the Constitution of the United States, and the Legislature of a State can pass any law (whether general or special) *without* the Constitution of the State, and also such as are *not Prohibited* by the State Constitution. Now when the case in 5 Neb. 127 is tested by this rule, it will be found unobjectionable to sec. 1, art. 8, of the Constitution of Nebraska. For by the act there under consideration the Commissioners were directed to change the "*form*" of the indebtedness, admitted to be legal and binding, from county warrants past due, to bonds to become due in five years from the 1st of April, 1875. And by the Constitution the "Leg-

islature shall pass no special act conferring '*Corporate Powers.*' " The word "POWERS" is the essential word, and the word "*Corporate*" is only an adjective describing what kind of "Powers" shall not be conferred by special act. This certainly does not prohibit the Legislature from conferring other powers, such as changing the form of indebtedness from floating county warrants, which are legal and binding, to county bonds, as was done in 5th Neb. 127, for the locality in the one instance is placed in no different circumstances; it only changes the "*form*" of its indebtedness, but does not increase it, whereas in the other the locality is submerged with debts if special laws might be passed. And the opinion in 5th Neb. 127, is based upon that distinction. And in Clegg vs this Plaintiff in Error, 8 Neb. 178, the Court distinctly holds that the word "POWERS" is the essential word, and the word "*Corporate*" is only descriptive of the kind of "*Powers*" prohibited, and under the Clegg case it makes no difference whether the powers granted by a special act are conferred upon a corporation under the laws of Nebraska, or upon a locality which is not encorporated, if the act confers "*Powers*" which are in the opinion called "*Corporate Powers*" among which are those contained in the act under which these bonds were issued, it is void. The act under consideration in 5 Neb. 127, conferred a "Privilege," and in the case at bar the act confers a "Power." For the Commissioners in 5 Neb. 127 could not change the indebtedness from warrants to county bonds without permission from the Legislature so to do. And for the purpose of limiting the amount of county warrants authorized thus to be changed, the act gives a correct description of each warrant so authorized to be changed. The only objection found with the act in 5 Neb 127, was that it was more like a judgment than an act of the Legislature, and hence an encroachment of the Legislative upon the Judicial functions. See argument of attorneys, 5 Neb. 128, 129. Defendant in Error censures the Supreme Court of Nebraska for not referring to authorities from other

States Each State certainly retains the power to construe its own Constitution and laws passed under it. There were no authorities necessary, and only two other States, Ohio and Kansas, which have the same constitutional provisions. And the Statutes of those States may be entirely different, and if they were exactly the same, yet, if Ohio has a right to construe its Constitution and laws one way, and Kansas has the right to construe its Constitution the same or a different way, we are unable to see why Nebraska should be held by the Construction of either or both of those States. Counsel for Defendant in Error cite authorities from different States on this subject, and rely on Beach vs Leahy, 11 Kas. 23. We have no opportunity of thoroughly examining that case, but whatever construction the Courts of Kansas put upon their Constitution can in no way affect this cause. We contend that The construction placed upon the Constitution and laws of a State by the Courts of such a State are binding upon the Courts of the United States. Cooly Con. Lim. p. 13, and authorities cited. Also Town of South Ottawa vs Perkins, 94 U. S. 260-268. And Nebraska has an equal right in this regard with all the other States.

2d.

In the 4th point of its argument, Defendant in Error claims that Plaintiff in Error is "estopped" from denying a liability by reason of a peculiar statement, as noted in the argument in chief of the Plaintiff in Error Upon this point we have simply to add: That the power of a *quasi corporation*, like Plaintiff in Error, to issue bonds, depends entirely upon the Statute. Estoppels only apply to mercantile, or other money-making corporations. If it were otherwise, then an officer might issue bonds at pleasure, sell them at any price to an innocent purchaser, invest portion of the proceeds in property for the use of the corporation, pocket the remainder, and so manage the affairs of the corporation that the money invested for it would be used by the corporation, and thus himself create an authority to issue bonds

by estoppel when none existed by either Statute or Constitution. We understand the law to be that the power to issue bonds depends entirely upon a valid and constitutional Statute, and if the Statute under which the bonds were issued is repugnant to the Constitution, the bonds are invalid, and no estoppel can be plead. Dillon on Mun. Cor., secs. 381 and notes, and 419 and notes. Thus in the case of Township of East Oakland vs Skinner, 94 U. S. 255. The township had subscribed and received the "Stock" of the Railroad Company and was enjoying the benefit of such Stock, yet this Court did not consider an estoppel would apply. The same may be said of the case of Town of South Ottawa vs Perkins, 94 U. S. 260. In McClure vs Township of Oxford, 94 U. S. 429, the bonds were issued to build a bridge. The bridge was built, the citizens of the Township enjoying the benefits, yet an estoppel was not recognized. In the case of Marsh vs Fulton County, 10 Wall 676, the bonds were held void (although interest had been paid on the bonds for several years), for the only reason that the bonds were voted to one corporation and issued to another, and estoppel was held not to apply, there being no power to issue the bonds in the first instance. And so in every case where there was no power to issue bonds in the first instance, they have always been held void. Aspinwall vs Commissioners, &c., 22 How., 364.

3d,

In the 5th point of argument of the Defendant in Error, other Statutes of Nebraska are referred to as giving authority to issue the bonds, the coupons of which are here in suit, and they refer to the two acts, the first beginning on page 118, the second on page 208 session laws of Nebraska, 1875. In reference to the first of these two acts we will say this: The Constitution of Nebraska, 1866, sec. 19, art. 2, reads in part as follows, "viz:" "No bill shall contain more than one subject, which shall be *clearly* expressed in its title, and no law shall be revived or amended unless the new act contain the

entire act revived and the section amended; and the section or sections so amended "*shall be repealed*" The title of the act on page 118, laws of Neb., 1875, is as follows, "viz:" "An act to amend an act entitled 'An act to establish a system of public instruction for the State of Nebraska.'" Now the act proposed to be amended by this act constitutes the entire school law of Nebraska for *Common Schools* and contains 95 sections. This act, p. 118, laws of 1875, proposes to amend these 95 sections, and it applies, therefore, as well to the 2d section of the old school law, which makes each District a corporation, or the 15th. which makes the Directors record evidence in Court, as it does to the 30th, which provides for raising money to build school houses. But an amendment implies the betterment of the old, and certainly a change of every section of the old school law to the single section of this pretended amendment for no other purpose than to issue bonds cannot be regarded a *clear* expression of the subject of the *bill*. Besides, if it is an amendment and good it MUST REPEAL the law which was amended, and this would leave Nebraska without a school law. It is absurd to think such a thing was intended, and the act on page 118, Laws Neb, 1875, is clearly repugnant to the Constitution. Besides, the act provided that the bonds shall be attested upon the face of the bonds by the "*County Clerk and Recorder of the county in which the School District is situated, that they were regularly issued.*" which is not the case with these bonds. By the act on p. 208 sess. laws 1875, Falls City is excluded by sec. 33, p. 218, and it only applies to cities of the 2d class having a certain population, and provides that such city shall constitute but "ONE *School District*," which shall be known by the name of "the School District of (name of the city), in the county of (——) Nebraska," so that it cannot, in any way, apply to this Plaintiff in Error, which is a Common School District, as provided by sec. 2, page 692, Gen. Stat, of Neb., 1873. We will say nothing, therefore, of the Constitutional objections to this act, as they do not affect this Plaintiff in Error, for we do

not think this court will hold us under an act which, as averred in argument of Defendant in Error, applies to us, and from which the Legislature has excepted us. Defendant in Error refers to sec. 29, chap. 69, Gen. Stat Neb., 1873, p. 988. This section is part of the law establishing a school system for cities of the "first class," and by the first section, p. 982, provides that each city of the first class shall constitute "ONE SCHOOL DISTRICT, Which shall be known by the name of 'the School District of (name of city), in the county of (——), of State of Nebraska,' " whereas by sec. 2, p. 962, a Common School District shall be known by the name of "School District No. ——, of —— County," just as this Plaintiff in Error is designated in this suit. Whereas the act under which these bonds were issued (act Feb. 2, 1875, p. 281, laws 1875) by the first section provides "*That the School District board of trustees of Falls City School District number fifty-six, &c.*" This, if words have any meaning, would imply that Falls City had at least 56 school districts, whereas there is *no law* of the State of Nebraska which makes more than *one school district* of any city, whether the same be of the 1st, 2d, or any other class. And there is no law of the State of Nebraska giving any authority for any such corporation as "*Falls City School District number fifty-six,*" except the act of February 2d, 1875, laws of 1875, page 281. And the bonds themselves begin with the following words: "Know all men by these presents that 'FALLS CITY SCHOOL DISTRICT NUMBER FIFTY-SIX, &c.," thus conclusively showing that the bonds were issued under the last named act. Now in order to create a corporation it is *absolutely necessary* that there be a "NAME" for the corporation, for it is by the "NAME" that it has its existence. Dil. Mun. Cor. secs 8, 117. Grant on Corporations, p. *5-17 It will thus be seen that the act of Feb. 2d, 1875, under which these bonds were issued, laws 1875, p. 281, creates by this special act an entirely *new corporation*, and at the same time confers POWER TO ISSUE BONDS. Is it not for that very reason in direct conflict with sec. 19, art. 2,

of the Constitution of Nebraska, for having *MORE than one subject*, and at the same time in conflict with sec. 1, art. 8 of the said Constitution, for being a "*special act conferring Corporate Powers?*" See 4 Neb. 353, and also 5 Neb. 305, and 505. Also 8 Neb. 178 and 508. It will further be seen by the record that the Bonds are to be paid by "*Falls City School District Number Fifty-Six*," and the coupons are to be paid by "*School District No. 56 in Richardson County, Nebraska*," thus creating a *variance* between the "bond and the coupons," the one payable by one corporation, the other to be paid by this Plaintiff in Error. Falls City School District No. 56 may have done what Defendant in Error claims, but it is an entirely different organization, and cannot affect this Plaintiff in Error; but the coupon must go with the bond, and if the bond is void, the coupon falls with it. There is no law whatever in the State of Nebraska under which these bonds can be sustained, except the act of Feb. 2, 1875, above referred to, and that act having been declared unconstitutional (8 Neb. 178), it destroys all authority for issuing these bonds, and they must be held void.

Defendant in Error next refers to sec. 13, p. 173, Laws of Neb. 1879, as an authority for sustaining these bonds. We will only say this in regard to this statute, that it has first of all no application to the case at bar, and only provides for levying taxes for bonds issued under that act. It would be a fine state of affairs if officers of these little limited corporations could issue bonds, sell them, receive the proceeds in their own hands, and then in five or ten years afterwards lobby a general law through the Legislature for the purpose of legalizing what would otherwise be a crime.

With this we will submit this cause to the consideration of this Court.

E. ESTABROOK and
G. P. UHL, Attorneys for Plaintiff in Error.

CASE No. 714.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1879.

SCHOOL DISTRICT No. FIFTY-SIX OF RICHARDSON COUNTY, NEBRASKA, *Plaintiff in Error*,

vs.

THE ST. JOSEPH FIRE AND MARINE INSURANCE COMPANY, *Defendant in Error.*

STATEMENT

OF THE CASE, BRIEF, AND ARGUMENT BY DEFENDANT IN ERROR.

WILLARD P. HALL,
B. R. VINEYARD, } *Att'ys for Def't in Error.*

IN THE
SUPREME COURT OF THE UNITED STATES.

SCHOOL DISTRICT NO. 56, OF RICHARDSON COUNTY, NEBRASKA, *Plaintiff in Error*,

vs.

THE ST. JOSEPH FIRE AND MARINE INSURANCE COMPANY, *Defendant in Error*.

Statement of the Case by Defendant in Error.

This suit was instituted in the Circuit Court of the United States for the District of Nebraska, by the defendant in error, to recover against the plaintiff in error for the amounts due on 234 coupons, of bonds issued by the plaintiff in error, in 1875. By the agreement of the attorneys of record in said cause (p. 5 printed record), only the jurisdictional clause of plaintiff's petition, a copy of the first count of said petition and the prayer thereof, together with the record entries have been certified up to the Supreme Court, it being farther stipulated by said attorneys that exhibit A. (p. 5) is a true copy of bond number one, and coupon number one, attached thereto, issued by the defendant, (the plaintiff in error here) and that it issued two hundred bonds of like tenor, date and amount, and that each

of said bonds had attached thereto, twenty coupons of like tenor, date and amount, and that said bonds were numbered from one to two hundred, inclusive, and said coupons were numbered from one to twenty, inclusive.

The petition, (p. 1) after charging the corporate existence of plaintiff and defendant, and after charging the plaintiff (defendant in error) to be a citizen of the State of Missouri, and the defendant (plaintiff in error) to be a citizen of the State of Nebraska, shows that said defendant, on August 2nd, 1875, by the name mentioned in the bond, which was signed by the trustees, moderator and director of said District, as set forth in the bond, acknowledged itself indebted, and promised to pay to the bearer one hundred dollars on the 2nd day of August, 1895, for value received, with interest thereon, at the rate of ten per cent. per annum, payable annually on the 2nd day of August, of each year, on presentation of the annexed coupons, as they respectively become due. The petition then charges that "said bond with others (in all two hundred in number), all of like date, tenor and amount, was issued in payment for the erection of a school building and procuring a site therefor." It is also averred in the petition that said bonds were issued pursuant, and in conformity to a special act of the Legislature of Nebraska, entitled "An act, authorizing School District Number Fifty-Six, of Richardson county, to issue bonds for the purpose of erecting a school building and procuring a site therefor, and setting aside a fund to pay same," that they were also issued pursuant to the power granted by a majority of the electors of said school district, at an election held on July 19th, 1875, and conducted in the manner provided by law.

The following is the concluding portion of the petition (p. 2): "Plaintiff further alleges that defendant has accepted the building erected, and the site procured, [through the issue of said bonds] and now occupies the same for the purposes intended, and that this plaintiff became the owner, holder, and bearer of said bonds for a valuable consideration, before the maturity of any coupon thereto attached, and paid therefor an

amount far in excess of eighty-five per cent. of the par value thereof.

And plaintiff states that by a certain interest coupon numbered 1, with the name of Joseph D. Gilman, the then acting director, subscribed thereto, formerly attached to said bond and bearing even date therewith, herewith filed, the defendant promised to pay to the bearer on the 2d day of August, 1876, ten dollars, for value received, at the National Park Bank, in the City of New York, being one year's interest on bond of said District No. 167; which said bond was duly presented at maturity at said bank and payment thereof demanded, which was refused, whereupon the same was duly protested for non-payment, and defendant was duly notified thereof; that the plaintiff is the owner, holder and bearer of said coupon, and the same remains due and unpaid. Wherefore," &c.

To this petition the defendant (the plaintiff in error) filed a demurrer on the grounds, as charged in said demurrer, that the petition did not state facts sufficient to constitute a cause of action, and the Court had no jurisdiction of the subject matter, (p. 3.)

This demurrer the Court overruled, and, the defendant not desiring to plead further, judgment was rendered for plaintiff for $2,554.70, the full amount of principal and interest due on the coupons in suit, (p. 4.)

In ruling upon the demurrer and rendering judgment for the plaintiff, the Judges were divided in opinion as to whether the act, recited in the bonds, was in conflict with Section 1 of Article VIII of the Constitution of the State of Nebraska, in being a special act, conferring corporate powers, and also whether it was in conflict with Section 19 of Article II, of said Constitution in containing more than one subject. They were also divided in opinion as to whether a money judgment could be rendered on the coupons, and whether said special act was repealed by the act of the Legislature of said State, approved February 25, 1875, entitled, " An act to amend an act entitled

an act to establish a system of public instruction for the State of Nebraska." (P. 5.)

The case has been brought to the Supreme Court on a writ of error.

POINTS AND AUTHORITIES AND ARGUMENT BY DEFENDANT IN ERROR.

I.

The special act recited in the bonds entitled, "An act authorizing school district number fifty-six of Richardson County, to issue bonds for the purpose of erecting a school building, procuring a site therefor, and setting aside a fund to pay same," approved February 2d, 1875, (see Laws of 1875, p. 281), is not in conflict with Section 19 of Article II of the Constitution of Nebraska. That portion of Section 19, on which plaintiff in error relies for a reversal of this case, reads as follows: "No bill shall contain more than one subject, which shall be clearly expressed in its title."

Now, it is apparent from the reading of this special act, that the subject of the bill is clearly expressed in its title. The object of the act was to enable district No. 56 to erect a school building. To do this it was necessary to procure a site on which to erect the building, and to pay for the building and site. To provide for this payment the legislature conferred authority to issue the bonds provided for in the act. Now the full scope and purpose of this act is fully and clearly set forth in its title.

It would seem that this branch of the argument, relating to the clearness of the title of the act, is free from all question. The District and Circuit Judges before whom this case was tried, did not seem to think this matter of clearness of title to amount to sufficient to justify them to be of a divided opinion thereon, hence there was no division between them as to this matter. We would not have referred to this at all if it had not been raised in the printed argument of counsel for plaintiff

in error. Nor is there any variance between the act and its title. If there were it would not invalidate the act. (28 Ill., 534.) The title refers to the authority of the district to issue the bonds—the act provides that the Board of Trustees of the district, acting, of course, for it, and as its agent, shall issue the bonds, and the bonds under consideration were so issued. There was no division of opinion between the Judges below on the ground of variance between the title and the act. The Supreme Court will only consider upon a certificate of division in cases like this, the exact questions on which the division took place.

Adams vs. Jones, 12 Pet., 107;
Ward et al., vs. Chamberlain, 2 Black., 430.

II.

It is further claimed as a ground of reversal by counsel for plaintiff in error, that the act recited in the bonds, approved February 2d, 1875, is in conflict with said section 19 of Article II, of the Nebraska Constitution in that it contains more than one subject. On this matter the Judges below were opposed in opinion. We think Circuit Judge Dillon was clearly right, and District Judge Dundy clearly wrong. What is the meaning of the Constitutional provision that "no bill shall contain more than one subject?"

Cooley, in his work on Constitutional Limitations (p. 146) in treating of this prohibition in the Constitution, says: "There has been a general dispositton to construe the Constitutional provision liberally, rather than to embarrass legislation by a construction whose strictness is unnecessary to the accomplishment of the beneficial purposes for which it has been adopted." The principle is well settled that subjects subordinate to, and naturally or necessarily connected with, the primary or leading subject of the bill, may be included in the bill without rendering the act double, or multifarious in the sense of the Constitutional prohibition.

Philips vs. the Town of Albany, 28 Wis., 340.
Mills vs. Charleton, 29 Wis., 407.

It is enough if the act deals with one principal subject, and all its provisions are subsidiary or incidental thereto, or are naturally connected therewith.

People vs. Whright, 70 Ill., 396.

People vs. Brislin, 80 Ill., 433.

Neuendorff vs. Duryea, 69 N. Y., 557.

People vs. Banks, 67 N. Y , 568.

Ohio ex rel., &c., vs. Covington, 29 Ohio St., 102.

"This provision has been frequently construed to require only the general ultimate object to be stated in the title, and not the details by which the object is to be attained. Any provision calculated to carry the declared object into effect is unobjectionable."

1 Dillon on Municipal Corporations, sec. 28.

"It will be sufficient, however, if the law have but one general object, which is fairly expressed in the title of the bill."

Whright vs. City of Lincoln, 5 Neb., 516.

See also cases cited in Notes to Cooley's Constitutional Limitations, pp. 146 and 147.

Applying the foregoing principles to the act in question, we readily see that it contains only one subject. Only two views can be taken as to the leading subject of the act. If the general purpose and object of the act was to provide for the issue of bonds, with which to purchase a site and to build thereon a school building, it will be seen by examination that everything else in the act naturally relates to this general object. Or, if the general and leading object of the bill was to procure a school building for the district, then everything else in the act is incident and necessary to this object. Of course, a school house could not be built without a site on which to erect it; and if the district did not have the money with which to pay for the site and the erection of the house, of course it was necessary to authorize the issue of bonds with which to pay therefor. These matters are naturally and necessarily connected with the primary and leading subject of the act.

It may also be stated that in the case of Clegg vs. plain-

tiff in error, reported in 8th Nebraska Report, p. 178, (and to which a more extended reference will be made hereafter) the Supreme Court of that State does not hold the act in question unconstitutional on the ground that it contains more than one subject.

Before dismissing this branch of the case, it may be proper to add that the highest judicial tribunals of at least two States have held this Constitutional requirement to be simply directory.

Pim vs. Nicholson, 6 Ohio St., 179.
Washington vs. Murray, 4 Cal., 388.
Matter of Boston, Min , &c. Co., 51 Cal., 624.
Ohio ex rel., &c., vs. Covington, 29 Ohio St.. 102.
Lehman vs. McBride, 15 Ohio St., 573, 602.

III.

Again, it is urged as a reason for the reversal of this case, that the act referred to in the bonds is in violation of section 1 of article 8 of the Nebraska Constitution, which provides that "the legislature shall pass no special act conferring corporate powers." This is one of the questions upon which the Judges below were opposed in opinion.

Before presenting our views on this constitutional provision, we desire to call the attention of the Court to the case of Clegg vs. this plaintiff in error (8 Neb., 178), on which opposing counsel seem to rely with the most confidence for a reversal of this case. We will not charge it to be true, as we have been informed, that the Clegg case was rushed through the Courts of Nebraska in order to forestall the rulings in other cases, where the litigants on both sides were more deeply interested, but we will say that the case seemed to receive but little consideration by the Supreme Court of that State. No authorities are cited, no extended reasoning indulged in, only the conclusion reached that the act was unconstitutional. No reference is even made to the decision in the case of the Commissioners of Jefferson County vs. People (5 Neb., 127), where

a similar act was decided by the same Court to be constitutional. The only difference in the acts considered in the two cases being, that in one authority is conferred to issue and sell bonds at ninety cents, and with the proceeds to buy up county warrants, while in the other authority is conferred to issue and sell bonds at eighty-five cents, and with the proceeds buy a site and build a school house thereon. Perhaps the Court is to some extent excusable. Mr. Clegg had only ten dollars involved in the case, as is shown by the record, and he probably did not feel justified in hiring an attorney to present the law in support of his claims, so he appeared for himself, as is shown by the published report of the case. It is true that he prosecuted his ten dollar claim through the Justice's Court, through the District Court, and through the Supreme Court of the State, in order, we suppose, to have the principle of law settled. Whether Mr. Clegg had become exhausted by the time he reached the Supreme Court, or whether it was the result of his extremely amicable disposition, he seems to have been prevailed upon by the attorney on the other side to stipulate what points should be decided. (8 Neb., 179.) If Mr. Clegg, or his opposing counsel, presented any briefs or authorities, they are not noticed in the report of the case. To cut further comment short, a charitable criticism will permit us to say, that the opinion does not appear to have been well or fully considered.

Now, what is the meaning of the constitutional prohibition against the legislature passing any special act conferring corporate powers? We claim that this constitutional prohibition does not apply to legislation relating to *quasi* corporations, such as counties, townships, or school districts, but to corporations proper. The former are simply political subdivisions of the State, "mere governing agencies, charged with certain objects of necessary local administration," (Hamlin vs. Meadville, 6 Neb., 233), possessed of such functions and powers only as are expressly conferred by law.

Counsel for plaintiff in error have referred to a number of

decisions of the Supreme Court of Ohio, (and others to the same effect from the same State, might be cited) construing the scope of the constitutional provisions now under consideration. But not in a single case is there authority for holding that the prohibition against conferring corporate powers, relates to legislation concerning *quasi* corporations.

The latest authority from that State, to which opposing counsel refer, (State &c. vs. City of Cincinnati, 20 Ohio St., p. 18) clearly holds that no special act can confer corporate power on municipal corporations proper, such as cities and towns; but to prevent any misconstruction that might be placed on the decision, the Judge delivering the opinion, concludes as follows (p. 37): "Yet for the purpose of excluding a possible conclusion, I will, on my own individual responsibility, say one word more. It may be asked, do we intend to include township and county organizations in the category with municipal and other corporations, proper? The question is not involved in the present case, and so is not properly before us; but if it were, I apprehend the answer to it would readily be found in the case of the Commissioners of Hamilton County vs. Mighels, 7 Ohio St., 109, where it is held that a county is not properly a corporporation, but that 'it is at most but a local organization, which, for the purposes of civil administration, is invested with a few functions characteristic of a corporate existence.'"

But we are willing to leave this branch of the argument with a reference to the opinion of the Supreme Court of Kansas in the case of Beach vs. Leahy (11 Kan. 23), where this subject is carefully and exhaustively examined. The Court will perceive that the provisions of the Constitutions of Kansas and Nebraska, are exactly alike in the words used in prohibiting the Legislature from passing "any special act conferring corporate powers." The question before the Supreme Court of Kansas, was the constitutionality of a special act authorizing a a certain named School District in that State to issue bonds to build a school house. The Supreme Court, after a full and

careful examination of the whole subject, decides that this constitutional restriction was not intended to apply to a School District, although the Statute made it, by name, a corporation; that the act in question was constitutional, and that the bonds must be paid.

IV.

The plaintiff in error is not entitled to a reversal in this case, even though the act recited in the bonds, (the coupons of which are in suit), is unconstitutional; for the reason that it is estopped from asserting that the bonds are invalid. The bonds, which are negotiable in form, show on their face that they were issued "for the purpose of erecting a school building and procuring a site therefor." The petition, (all the allegations in which under the demurrer must be taken as true) shows that the bonds and coupons thereto attached, which are also negotiable in form, were used in erecting the school building and procuring the site therefor, provided for in the act, and that "the defendant, (plaintiff in error), has accepted the building erected and site procured, and now occupies the same for the purposes intended;" and it further shows that the defendant in error purchased said bonds and coupons before due for a valuable consideration. These bonds were issued for the very purpose of carrying out the objects for which school districts were created under the laws of Nebraska. See Gen. Statutes of Nebraska, p. 971, Sec. 58.

In a very recent case. decided by the Supreme Court of Ohio. (The State *ex rel.* vs. Mitchell, 31 Ohio St., 610.) After holding that the act under which a certain debt had been contracted was unconstitutional, nevertheless decides the debt must be paid, those having caused it to be contracted being estopped from denying its validity. The Court says: "Having voluntarily availed themselves of the provisions of the act, to create an indebtedness for the benefit of their property, good faith requires that they should thus be estopped. The principles of estoppel apply when the proceedings are questioned on the ground of the unconstitution-

ality of the statute under which they are had, as well as where they are sought to be impeached on other grounds. Hence, notwithstanding the unconstitutionality of the act, the rights of third parties have so intervened, that it is the duty of the commissioners to complete the apportionment of the assessment in accordance with the terms of the act."

See also to the same effect, where an unconstitutional act had been passed, providing for the issue of bonds by counties in Kentucky to pay for substitutes to serve in the army. The doctrine of estoppel applies as against those participating in the benefits accruing under the act.

Furguson vs. Landrum, 1 Bush, 548;

Same case, 5 Bush, 230.

The Supreme Court of the United States, though not resting the decision solely on that ground, quote approvingly in the case of Township of Pine Grove vs. Talcott (19 Wall., 678), the following language of Mr. Sedgwick, in his work on Statutory and Constitutional Law: "Although a corporation in making a contract acts in disagreement with its charter, where it is a simple question of capacity or authority to contract, arising either on a question of regularity of organization or of power conferred by the charter, a party who has the benefit of the agreement, cannot be permitted in an action founded on it to question its validity. It would be in the highest degree inequitable and unjust to permit the defendant to repudiate a contract the fruits of which he retains."

This doctrine of estoppel, it will be admitted, can only be applied against a corporation, when the debt was contracted, or the obligation assumed in carrying out the general purposes for which the corporation was created. This principle can always be invoked with assurance and confidence, when power can be found anywhere under the law governing the corporation for making the contract sought to be avoided. And this brings us to the consideration of the next branch of this case, and that is, whether authority had been conferred on the plaintiff in error, by any law of Nebraska outside of the act referred

to in the bonds, the coupons of which are in suit, to issue them at the time they were issued. If so, then though said act be unconstitutional the bonds and coupons are valid and must be paid.

V.

We claim that outside of the act referred to in the bonds, on the coupons of which the judgment below was rendered, authority for their issue can be found.

First. In the act approved February 25, 1875, entitled, "An act to amend an act, entitled 'an act to establish a system of public instruction for the State of Nebraska.'" (Laws of Nebraska, 1875, p. 118.) This act authorizes the district officers of any school district in the State to issue the bonds of the district for the purpose of purchasing a site for, and erecting thereon a school house or houses. The bonds in controversy were issued in exact conformity with this general act.

The bonds show on their face that more than two-thirds of the electors of the district, voting on the question, declared by their votes in favor of issuing the bonds—there being 105 votes cast for, and only 1 vote against, their issue, and in this particular there was a perfect conformity to the requirement of the act of the Legislature, to which reference has just been made.

Authority for the issue of the bonds in question can also be found.

Second. In a general act of the Legislature of Nebraska, entitled, "An act relating to public schools in cities of the second class, where graded and high schools are, or hereafter may be established," approved February 25, 1875. (See Laws of 1875, p. 208.) Sections 29 and 30 of this act (p. 216) confer the authority to issue the bonds of the character of those in controversy. Attention has been called by counsel for plaintiff in error to the proviso at the close of section 33 of the act last referred to, as taking Falls City and four other cities there named, out of the operation of the act. The great burden of the argument on the other side has been that the Legislature

could not pass "special acts conferring corporate powers" on school districts. If this argument has any force as applied to the act recited in the bonds in controversy, it would have equal force as applied to the act last referred to, and would compel us to reject this unconstitutional *proviso* in the act, which would make it special, and thus leave the whole a general law, subject to no constitutional objections. The *proviso* may also be rejected as unconstitutional, in not being referred to in the title of the act as required by the organic law of Nebraska. Authority for the issue of the bonds in question can also be found.

Third. In Section 29 of Chapter 69 of the General Statutes of Nebraska (1873, p. 988), relating to schools in cities of the first class. There is nothing in the record in this case to show whether Falls City is a city of the first class or not. The charge, however, is that the defendant School District by its bond promised to pay, &c., and this case coming up on a demurrer to the petition, the above Section of the Statutes could be invoked in support of authority to issue the bonds, if no other existed.

Now, these general laws being in force at the time, can they be invoked to support the validity of the bonds in dispute, if the act recited on their face should be thought to be unconstitutional? We hold that they may. The special act and these general laws are not inconsistent, or in conflict with each other. Each bond recites that it "is one of two hundred, numbered from one to two hundred, both numbers inclusive, all of like date, tenor and amount, and issued by said school district in pursuance of, and conformity to, an act of the legislature of Nebraska, entitled An act, &c." Now, we claim that the recital may be true, and it still be true that the bond was "issued by said school district in pursuance of and conformity to" said general laws, or some of them. In discussing the effect of the recital of an unconstitutional act upon the face of municipal bonds, when there existed a valid law authorizing their issue, the Supreme Court of Missouri, in the case of

Smith vs. County of Clark (54 Mo., p. 71), says: "Whether the recital in these bonds would constitute an estoppel against the makers, it is not important to inquire; if it were so, it would not follow that the purchaser or holder is bound. If he can show that the power existed, a false recital of it, however obligatory on the county or its agents, would not defeat its efficacy in the hands of a party nowise concerned in the perpetration of the falsehood."

The Supreme Court of the United States, in 1876 (Commissioners vs. January, 94 U. S., p. 205), in passing upon a like question, says: "The act mentioned in the recital of the bond was erroneously referred to. That act does not affect the case, and may be laid out of view." The court then proceeds to hold the bonds valid under a different law from that recited in the bonds, the recited act having been repealed before the bonds were issued.

VI.

The Judges in the lower Court were also opposed in opinion, as to whether any judgment for money could be rendered on the coupons in suit. (Printed record, p. 4.) We think that the Supreme Court will have but little difficulty in deciding, as did Judge Dillon, that such judgment was the only one to render.

"The remedy of the municipal or county bondholder in the Federal Courts is to sue at law and obtain a judgment, to establish the validity and amount of his debt."

Dillon on Municipal Bonds, Sec. 26.

The Federal Courts have no power to issue a writ of *mandamus* as an *original* proceeding; and hence a bondholder cannot, before putting his claim into judgment, apply for a *mandamus*. He *must* first obtain judgment.

Riggs vs. Johnson County, 6 Wall., 166;
Heine vs. The Levee Comm'rs, 19 Wall., 655;
Town of Queensbury vs. Culver, 19 Wall., 83.

After the bondholder has reduced his claim to judgment,

he may then proceed by *mandamus* to enforce the payment thereof. When that proceeding is instituted, it will be time for the Courts to say where the money must come from. We ask the Supreme Court not to decide, in advance of the time when that question can be properly raised, that Section 4 of the special act referred to in the bonds in controversy, is the only source from which money can be realized to pay off the judgment. At the proper time we expect to show to the entire satisfaction of the Court that the fines, penalties and forfeitures provided for in Section 4 were ordered by the act to be turned over to the school board, simply *to aid* it in paying this debt; but that the debt, in any event, must be paid by the district as it matures, though not a dollar should be realized from this special source.

VII.

The only remaining question upon which the Circuit Judge and District Judge were opposed, not thus far discussed, is whether the special act recited in the bonds in controversy, was repealed by the act of February 25th, 1875, entitled "An act to amend an act, entitled 'an act to establish a system of public instruction for the State of Nebraska,'" (Laws of Neb., 1875, p. 118.)

In the first place, we cannot perceive what difference it would make, if this general law did operate as a repeal of the special act. As we have already endeavored to show, the bonds would still be perfectly valid under the general law. But this act of February 25th, 1875, did not operate as a repeal of the special act of February 2d, 1875, recited in the bonds, the coupons of which are involved in this suit. The Court will perceive that this general act, to which reference has just been made, does not purport by its terms to repeal any law of the State whatever. By its title, it purports to amend a general act which was passed in 1869, and which is embraced in the General Statutes of 1873. (Pp. 960 to 981, inclusive.) By an examination of the old act, of which the new is an amendment, it will be seen that the new simply confers additional

powers upon the school districts of the State, in regard to issuing bonds for purchasing sites and building school houses thereon. In other words, the act of February 25th, 1875, empowers the school districts to go deeper in debt than they were authorized to go under the general laws of the State before that. But this act does not profess or attempt to change any special law, or to be a revision of the law on the subject of schools or school districts, or to amend any particular section of any general law. It amounts simply to an addition to the act of 1869, conferring additional powers upon the school districts. This act of February 25th, 1875, contains but two sections, the first granting the additional power already mentioned, and the second providing that the act shall take effect at the time of its passage. The special act of February 2d, 1875, (Laws of 1875, p. 281,) recited in the bonds in controversy, was passed at the same session of the Legislature, and contains nothing in conflict with the general act. Both acts are perfectly consistent. The bonds under consideration, issued pursuant to the special act, are also issued pursuant to the requirements of the general act.

"Where a statute does not, in express terms, annul a right or power given to a corporation by a former act, but only confers the same rights and powers under a new name, and with additional powers, such subsequent act does not annul the rights and powers given under the former act and under its former name, there being no express repeal."

St. Louis vs. Alexander, 23 Mo., 483.

"It is a principle of very extensive operation, that statutes of a general nature do not repeal, by implication, charters and special acts, passed for the benefit of particular municipalities."

Dillon on Municipal Corporations, Sec. 54.

Repeals by implication are not favored; and special laws, conferring particular rights upon municipalities, are not repealed by subsequent statutes, general in their character.

Ottawa vs. County, 12 Ill., 339;
Egypt Street, 2 Grant (Pa.) Cas. 455;
Hogan vs. Guigon, 29 Gratt., (Va.) 705,
Rounds vs. Waymart Borough, 81 Pa. St., 395.

If a special provision, applicable to a particular object or locality, be inconsistent with a general law, the former must prevail.

State vs. Vic. DeBar, 58 Mo., 395.

"It is a maxim in the construction of statutes, that the law does not favor a repeal by implication. The earliest statute continues in force, unless the two are clearly inconsistent with and repugnant to each other, or unless in the latest statute some express notice is taken of the former, plainly indicating an intention to repeal it. And when two acts are simply repugnant, they should, if possible, be so construed, that the latter may not operate as a repeal of the former by implication."

The People ex rel. vs. Weston, 3 Neb., 323;
White vs. The City of Lincoln, 5 Neb., 514;
Dwarris on Statutes, 674.

VIII.

We believe we have now presented our views upon all the questions which can arise in the consideration of this case; but it may not be improper in conclusion to make some general observations upon certain principles involved in the decision which may follow.

"It is an axiom in American jurisprudence, that a statute is not to be pronounced void upon the ground of unconstitutionality, unless the repugnancy to the constitution be clear, and the conclusion that it exists inevitable. Every doubt is to be resolved in support of the enactment. The particular clause of the constitution must be specified, and the act admit of no reasonable construction in harmony with its meaning. The judicial function involving such a result is one of delicacy and to be exercised always with caution."

Township of Pine Grove vs. Talcott, 19 Wall., 673.

In the case of Clegg vs. School District, (8 Neb., 178,) and on which counsel for plaintiff in error so confidingly rely, the Supreme Court of Nebraska declines to decide whether the bonds in controversy may not be valid under the general laws to which we have already referred. The Court says: "The record in this case does not contain the data necessary to enable this Court to determine whether the said District was or was not authorized to issue the

said bonds under the provisions of either of the two general acts, approved February 25th, 1875." The State Supreme Court in that case was hampered by a stipulation as to the points to be decided. The United States Supreme Court, in the case at bar, is not so hampered. The petition in this case charges that the plaintiff in error, by its bonds and coupons, promised to pay the bearer certain sums of money therein named. Did it have power to make such a promise, and was the promise made? If so, we do not care where the law may be found that confers the power, the promise is binding and it is the duty of this Court to enforce it.

Nor is the decision of the Supreme Court of Nebraska in the Clegg case binding upon the Supreme Court of the United States, in holding that the special act recited in the bonds in controversy is repugnant to the State Constitution. The latter Court, in the case of the Township of Pine Grove vs. Talcott (19 Wall., p. 677), in discussing this subject of municipal bonds, uses this language: "The question before us belongs to the domain of general jurisprudence. In this class of cases this court is not bound by the judgments of the Courts of the States where the causes arise. It must hear and determine for itself."

See also the following authorities:

Butz vs. The City of Muscatine, 8 Wall., 575.
Gelpcke vs. the City of Dubuque, 1 Wall., 175.

The Supreme Court of Nebraska, in 1876, decided that a special act, conferring upon the County Commissioners of the County of Jefferson power to issue bonds, with which to buy up the court house fund warrants, and to levy a tax to pay the interest on said bonds, was constitutional, and that the bonds issued thereunder must be paid. Commissioners of Jefferson County vs. People, 5 Neb., 127.

It is submitted that if this act for issuing bonds, with which to buy up warrants at not less than ninety cents on the dollar is constitutional; whether the act recited in the bonds in controversy, for issuing bonds with which to buy a site and build a school house thereon is not also constitutional.

The decision of the Supreme Court in this case, will not only involve the validity of the bonds issued by the plaintiff in error, the whole of which, with the interest thereon, making an indebt-

edness of nearly $30,000, are owned by the defendant in error, but it will also involve the validity of a large amount of other bonds, issued under other special acts of Nebraska, the interest on which has heretofore been paid, under the belief that the obligations were good.

The plaintiff in error has accepted from the defendant in error the money on these bonds; it has used the money in buying ground and building a school house thereon, the use of which it is still enjoying; no fraud or even shadow of unfairness is charged as having been used in getting the bonds issued; and we think, under the circumstances, it would not only be hard, but simply unjust, to permit the District to repudiate its obligations and at the same time hold on to the money of others which it has obtained therefor. No honest Court will permit it if the matter can be helped, and we think it can, by simply declaring the law as it is.

With the above we had intended to close this argument; but since its preparation we have seen and examined the acts of Nebraska for 1879, and desire to add one word more:

By a general law of that State, passed February 26th, 1879, (Laws of Neb., 1879, p. 173, Sec. 13,) it is provided that "it shall be the duty of the Board of County Commissioners in each County to levy, annually, upon all the property in each school district in each County, a tax sufficient to pay the interest accruing upon any bonds issued by such school district, and to provide for a sinking fund for the final redemption of the same." The defendant in error, as the holder of the bonds in controversy, has a right to avail itself of the provisions of this law; and there is nothing in the special act authorizing their issue in conflict therewith.

Under this general law, and also under the special act referred to, the defendant in error had a right to a money judgment such as was rendered by the lower Court.

County of Cass vs. Johnson, 95 U. S., 360.
Jordan vs. Cass County, 3 Dill., 185.

WILLARD P. HALL,
B. R. VINEYARD,
} *Att'ys for Def't in Error.*

OFFICE SUPREME COURT U. S.
FILED
MAR 27 1880
D. W. MIDDLETON, Clerk.

CASE NO. 714.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1879.

SCHOOL DISTRICT No. FIFTY-SIX OF RICHARDSON COUNTY, NEBRASKA, *Plaintiff in Error*,

vs.

THE ST. JOSEPH FIRE AND MARINE INSURANCE COMPANY, *Defendant in Error*.

Copies of Constitutional and Statutory Provisions of Nebraska,

Referred to in the Briefs of Counsel.

St. Joseph Steam Printing Company.

Constitution of Nebraska.

The following provisions of the Constitution of Nebraska have been in force ever since its admission as a State into the Union:

ARTICLE II.

SECTION 19. Every bill shall be fully and distinctly read on three different days, unless in case of urgency, three-fourths of the house in which it shall be pending, shall dispense with this rule. No bill shall contain more than one subject, which shall be clearly expressed in its title; and no law shall be revived or amended, unless the new act contain the entire act revived, and the sections amended; and the section or sections so amended shall be repealed.

ARTICLE VIII.

SECTION 1. The legislature shall pass no special act conferring corporate powers.

GENERAL STATUTES OF NEBRASKA, 1873.

The following are portions of the General Statutes of Nebraska, revised and adopted in the year 1873, which are referred to by counsel in their briefs:

SECTION 2. (p. 962, being part of an act entitled "An act to establish a system of public instruction for the State of Nebraska.") Every duly organized school district shall be a body corporate, and possess all the usual powers of a corporation for public purposes, by the name and style of "School District, Number ——, of ——— county," and in that name may sue and be sued, purchase, hold, and sell such personal and real estate as the law allows.

SEC. 29. (p. 966, being part of same act.) The said qualified voters shall also have power, at any regular or special meeting, to direct the purchasing or leasing any appropriate site, and the building, hiring, or purchasing of a school house, and the amount of fuel to be furnished for the succeeding year, and to levy a tax on the property of the district for the payment of the same.

SEC. 30. (p. 966, being part of said act.) Any school district shall have power and authority to borrow money to pay for the sites for school-houses, and to erect buildings thereon, and to furnish the same, by a vote of a majority of the qualified voters of said district present at any annual meeting, or special meeting: *Provided*, That a special meeting for such purpose shall be upon a notice given by the director of such district at least twenty days prior to the day of such meeting, and that the whole debt of any such district at any one time, for money thus borrowed, shall not exceed five thousand dollars.

SEC. 31. (p. 966, being part of same act.) Any school district may, at any annual or special meeting, impose a tax on the taxable property of the district in any amount not exceeding ten mills on the dollar, on the assessed valuation of the property of the district, for the purpose of building a school-house, and such tax, when voted, shall be reported by the district board to the county clerk, and levied and collected in the same manner as other taxes voted by the district.

SEC. 32. (p. 966, being part of same act.) The qualified voters, when assembled at any annual or special meeting, may,

from time to time, impose such tax as may be necessary to pay teachers, to keep their school-houses in repair, and to provide the necessary appendages, and to pay and discharge any debts or liabilities of the district lawfully incurred; may raise a sum sufficient for the purchase of books of reference, globes, maps, or any apparatus for the purpose of illustrating the principles of astronomy, natural philosophy, natural history, and agricultural chemistry, or the mechanic arts.

SEC. 33. (p. 966, being part of same act.) They may also determine, at each annual meeting, the length of time a school shall be taught in the district, the ensuing year, which to entitle the district to any portion of the state fund, shall not be less than three months in the districts which have less than seventy-five pupils, nor less than six months in districts that have between seventy-five and two hundred pupils, nor less than nine months in districts where there are more than two hundred pupils; and whether by male or female teachers, or by both; and whether the money apportioned for the support of the school therein shall be applied to the winter or summer term, or a certain portion to each.

SEC. 34. (p. 967, being part of same act.) In case any of the matters in sections thirty-two and thirty-three are not determined, at any general or special meeting, the district board shall have power, and it shall be their duty to determine the same.

SEC. 35. (p. 967, being part of same act.) Said qualified voters shall also, at any regular meeting, authorize and direct the sale of any school-house site, building, or other property belonging to the district, when the same shall no longer be needed for the use of the district.

SEC. 36. (p. 967, being part of same act.) They may also give such directions and make such provisions as they shall deem necessary, in relation to the prosecution or defense of any proceeding in which the district may be a party, or interested.

SEC. 58. (p. 971, being part of same act.) They, [the

district board] shall purchase or lease such site for a school-house as shall have been designated by the district, in the corporate name thereof, and shall build, hire, or purchase such school-house out of the funds provided for that purpose, and shall make sale and conveyance of any site or other property of the district, when lawfully directed by the qualified voters at any annual or special meeting: *Provided*, That the district shall not, in any case, build a stone or brick school-house upon any site without having first obtained a title in fee to the same, and also that they shall not in any case build a frame school-house on any site for which they have not a title in fee, without the privilege to remove the same when lawfully directed so to do by the qualified voters of the district at any annual or special meeting: *Provided, also*, That the qualified voters of the district may appoint a building committee, to take charge of the work of building such school-house.

SECTION 1. (p. 982, being part of an act entitled "An act relative to public schools in cities of the first class.") That each incorporated city of the first class in the state of Nebraska, or those hereinafter incorporated as such, shall constitute one school district, and be known by the name of "the school district of (name of city) in the county of (name of county), in the state of Nebraska," and, as such, in that name, shall be a body corporate, and possess all the usual powers of a corporation for public purposes, and in that name and style may sue and be sued, purchase, hold and sell such personal and real estate, and control such obligations as are authorized by law; and the title to all school buildings, or other property, real or personal, owned by any school district within the corporate limits of cities of the first class, shall, upon the organization of a district, under the provisions of this act, vest immediately in the new district, and the board of education, by this act provided, shall have exclusive control of the same for all purposes in this act con-

templated. *Provided*, That in case any city of the first class shall embrace more than one entire school district, and the fractional part of another district shall extend within the corporate limits of said city, the fractional part of said district so embraced within said corporate limits shall be exempt from the provisions of this act, until such time as a majority of the legal voters of said fractional part shall petition the board of education of said city to be included in said district, and upon the receipt of such petition by said board, the said fractional part shall be included within the said district, for all purposes of this act.

SEC. 25. (p. 986, being part of the same act.) That each of the school districts provided for in section one of this act, shall have the power, and it shall be the duty of the board of education, to provide for the payment of debts created by school districts or other school organizations, superseded by the districts herein provided for, when sueh debts shall have been incurred in the erection of school houses, or for other school purposes; if any portion of such debts shall be in the form of bonds, if issued for a valuable consideration, the holder or holders thereof, on surrendering the same to said board, shall have the right to demand, and it shall be the duty of said board, in the name of the district created by this act, to cause to be issued other bonds of like amount, of tenor and effect as to payment of principal and interest, as the bonds surrendered. This provision shall also apply to cases where only a part of a district shall be embraced within the district created by this act, whenever said fractional part shall petition and become a part of said district, as provided for in section one of this act: *Provided*, The latter shall assume and pay only such proportion of the debt of the divided district as the assessed valuation of the part taken therefrom shall bear to the assessed valuation of the part remaining. In case of a division of one or more school districts for the purpose of forming one school district within the limits of a city of the first class, it shall be the

duty of the county superintendent of public instruction, the president of the board of education, and the director of the school district, to appraise and adjust all claims or assets in such a manner that each district shall bear its proportion of the indebtedness, as heretofore provided, and have its proportion of the assets of said district.

SEC. 26. (p. 987, being part of same act.) That the board of education shall annually, during the month of June, report to the city council an estimate of the amount of funds required for the support of the schools for the fiscal year next ensuing, the amount of funds required for the purchase of school-sites, the erection and furnishing of school buildings, the payment of interest upon all bonds issued for school purposes, and the creation of a sinking fund for the payment of such indebtedness; and the city council is hereby authorized and required to levy and collect the necessary amount, the same as other taxes: *Provided, however,* That in case the purchase of school-sites and erection of buildings shall require an expenditure exceeding fifteen thousand dollars for any one calendar year, the question shall be submitted to a vote of the electors of the district, at the time and place of any city, county, or state election; the board of education shall, previous to such election, designate in at least one daily paper published in the district where such election shall be held, the locality of the site or sites required, and the cost of the building to be erected thereon.

SEC. 27. (p. 988, being part of same act.) That the aggregate school tax shall in no one year exceed one per cent. upon all the taxable property of the district.

SEC. 28. (p. 988, being part of same act.) That all taxes collected for the benefit of the public schools shall be paid in money, and shall be subject to the order of the board of education.

SEC. 29. (p. 988, being part of same act.) That the board of education may borrow money upon the bonds, which

they are hereby authorized and empowered to issue, bearing a rate of interest not exceeding ten per centum per annum, payable annually or semi-annually, at such place as may be mentioned upon the face of said bonds; which loan shall be paid and reimbursed in a period not exceeding twenty years from the date of said bonds: *Provided*, That no bonds shall be issued, nor question of issue be submitted to the electors, without the consent of two-thirds of all the members of the board of education, and be offered in open market, and sold to the highest bidder for not less than ninety cents on each dollar: *And provided further*, Whenever said bonds shall exceed in amount fifteen thousand dollars, the board of education shall submit the proposition for issuing said bonds, at an election called for that purpose, or at any regular election; notice whereof shall be given for at least ten days in one or more daily papers published within the district, to the qualified voters of said district, and if a majority of the ballots polled at such an election shall be "for issuing bonds," said board of education may issue bonds in such an amount as shall be named in their election notice; said election shall be held under the proclamation of the board of education, and in the form and manner as prescribed by law for elections in cities of the first class.

ACTS OF NEBRASKA, 1875.

The following are acts and parts of acts of the Legislature of Nebraska, passed and approved in February, 1875:

AN ACT

Authorizing school district number fifty-six of Richardson county, to issue bonds for the purpose of erecting a school building, procuring a site therefor, and for setting aside a fund to pay same.

Be it enacted by the Legislature of the State of Nebraska:

SECTION 1. (p. 281.) That the school district board of trustees of Falls City school district, number fifty-six, be, and they are hereby authorized to issue bonds of one hundred dollars each, to the amount of twenty thousand dollars, payable in ten or twenty years, at the discretion of said board, with interest at the rate of ten per cent. per annum, for the purpose of erecting a high school building and providing a site therefor in said school district.

SEC. 2. (p. 282.) That said bonds shall not be issued by said board of said district, unless the same shall be ordered by a majority vote of the electors of said school district voting at an election to be held for that purpose, said election to be called and conducted in the same manner as is now provided by law for the calling and holding special elections in the school districts, said notice shall state the proposition to be submitted to said electors. The electors when assembled shall vote by stating on their ballots, "for bonds," stating the amount to be issued, or "against bonds."

SEC. 3. (p. 282.) The said board of trustees shall provide the form of said bonds, and also sign and issue the same. Said

bonds and interest to be made payable in some stated place in New York City, and no bond or bonds to be sold at less than eighty-five cents on the dollar.

SEC. 4. (p. 282.) That all fines, penalties and forfeitures hereafter imposed, for any breach of the ordinances of Falls City, and all moneys for licenses to sell or traffic in liquors or any other commodity, or carry on or transact any business in said city, granted under any by-law or ordinance thereof, shall be set apart by the treasurer or other officer unto whose hands they may come, to be paid over to the said board of trustees, and all fines imposed by the police judge of said city shall also be placed to the credit of said school district.

SEC. 5. (p. 282.) The said high school above provided for, shall be constructed as near the centre of the old town-site as may be practicable, and shall be under the entire control and management of the school board of district number fifty-six.

SEC. 6. (p. 283.) This act shall take effect and be in force from and after its passage.

Approved February 2, 1875.

AN ACT

To amend an act entitled "An act to establish a system of public instruction for the State of Nebraska."

Be it enacted by the Legislature of the State of Nebraska:

SECTION 1. (p. 118, acts 1875.) That the district officers of any school district in the State of Nebraska shall have power to issue the bonds of the district for the purpose of purchasing a site for and erecting thereon a school house or houses in such district, not to exceed one thousand dollars, and the amount of bonds shall not exceed in amount the sum of two thousand dollars, where the number of children in said district, entitled to enter the common schools, shall not exceed twenty-five scholars; and the amount of bonds shall not exceed five thousand dollars, where the number of children in said district,

entitled to enter the common schools shall amount to the number of fifty scholars; ten thousand dollars where the number of such children is one hundred and not more than two hundred; fifteen thousand dollars where the number is two hundred and not more than five hundred; forty thousand dollars where the number is five hundred and not more than one thousand; and in such district where the number of such children shall exceed one thousand scholars, a sum not to exceed fifty thousand dollars, or so much thereof as the officers may deem necessary: *Provided*, No bond shall be issued until there are twelve scholars in said district, in sums not less than one hundred dollars each, which bonds shall draw interest from the date thereof, at a rate not to exceed ten per cent. per annum, the interest of which shall be payable annually, or semi-annually at such place as may be designated in the bonds, and the principal of the same shall be made payable, not to exceed fifteen years from the date of such bonds. The bonds shall specify on their face the date, amount, for what purpose issued, the time they run, and the rate of interest, shall be printed on good paper, with coupons attached for each year's or half year's interest; and the amount of each year's interest shall be placed in corresponding coupons, until such bonds shall become due, in a manner so as to have the last coupon fall due at the same time as the bond, said bonds and coupons thereto attached shall be severally signed by the director, moderator and treasurer of the district board, and the regularity of the issue of the bonds attested upon its face by the county clerk and recorder of the county in which the school district is situated: *Provided*, That no such bonds shall be issued until the question shall be submitted to the qualified electors of the district, and two-thirds of all the qualified electors present, and voting on the question, shall have declared by their votes in favor of issuing the same at an election called for that purpose, upon a notice given by the officers of the district, at least twenty days prior to the day of such election: *And provided*

further, That no vote shall be ordered unless a petition shall be presented to the district board suggesting that a vote shall be taken for or against the issuing of such amount of bonds as may therein be asked for, to purchase a site for, or build a school house or houses, or do both, in said district, which said petition shall be signed by at least one-third of the qualified voters of such district, and provided, in conclusion, that no such bonds shall be issued in aggregate amount to exceed three per cent. of the taxable valuation of the district as determined by the assessed valuation of said district, for county and State purposes, for the year next preceding such issue.

SEC. 2. (p. 120.) This act shall take effect and be in force from and after its passage.

Approved February 25, 1875.

SEC. 1. (p. 208 of Acts of 1875, being part of act entitled "An act relating to public schools in cities of the second class where graded and high schools are or hereafter may be established.) That each incorporated city of the second class in the State of Nebraska, or those hereafter incorporated as such, having a population of more than two thousand inhabitants, including such adjacent territory as now is, or hereafter may be attached for school purposes, shall constitute one school district, and be known by the name of "the school district of (name of the city), in the county of (name of the county), in the State of Nebraska," and as such, in that name, shall be a body corporate, and possess all the usual powers of a corporation for public purposes, and in that name and style may sue and be sued, purchase, hold, and sell such personal and real estate, and control such obligations as are authorized by law, and the title to all school buildings or other property, real or personal, owned by any school district within the corporate limits of any city of the second class wherein

graded and high schools have been, or hereafter may be, established, shall, upon the organization of a district, under the provisions of this act, vest immediately in the new district; and the board of education, by this act provided, shall have exclusive control of the same for all purposes in this act contemplated: *Provided*, That in case any city of the second class, above described, shall embrace more than one entire school district, and the fractional part of another school district shall extend within the corporate limits of said city, the fractional part so embraced within said corporate limits shall be exempt from the provisions of this act, until such time as a majority of the legal votes [voters] of said fractional part, shall petition the board of education of said city to be included in said district, and upon the receipt of such petition by said board, the said fractional part shall be included within said district, for all purposes of this act.

SEC. 29. (p. 216 of Acts of 1875, being part of same act.) That the board of education may borrow money upon bonds which they are hereby authorized and empowered to issue, bearing a rate of interest not exceeding ten per centum per annum, payable annually or semi-annually, at such place as may be mentioned upon the face of such bonds, which loan shall be paid and reimbursed in a period not exceeding twenty years from the date of such bonds: *Provided*, That no bonds shall be issued unless the said board of education shall first submit the proposition for issuing the same at an election called for such purpose, or at any regular election, notice whereof shall be given for at least ten days in one or more daily papers published within the district, to the qualified voters of said district, and if two-thirds of the ballots polled at such election shall be "for issuing bonds," said board of education may issue bonds in such an amount as shall be named in their election notice. Said election shall be held under the proclamation of the board of education, and in the form and manner as prescribed by law for elections in cities

of the second class: *Provided*, No bonds shall be issued, nor questions be submitted to the electors without the consent of two-thirds of all the members of the board of education: *And provided further*, That such bonds shall not be sold for less than ninety cents on each dollar.

SEC. 33. (p. 218 of Acts of 1875, being part of the same act.) That all moneys arising from any service [source] whatever, which under any prior act, or acts, of the legislature of this State, are payable to any school fund of any city of the first class, or any moneys which are required to be set apart by the treasurer of any such city for the support and maintenance of any school heretofore organized therein, under any general or special law, shall, on or after the passage of this act, be payable to the treasurer of the board of education, and shall be used only for the purposes specified in this act: *Provided*, That any city of the second class may suspend the operation of this law by a majority vote of said city in favor of suspension, and the city authorities are hereby empowered to submit such question of suspension at any municipal election of said town whenever a petition, signed by a majority of the citizens of said town, shall be presented, asking the same; *And provided, also*, That Falls City, Blair, Fremont, Seward and Brownville shall be excepted out of the operations of this act.

SEC. 35. (p. 219, Acts of 1875, being part of same act.) This act shall take effect and be in force from and after its passage.

Approved February 25, A. D., 1875.

graded and high schools have been, or hereafter may be, established, shall, upon the organization of a district, under the provisions of this act, vest immediately in the new district; and the board of education, by this act provided, shall have exclusive control of the same for all purposes in this act contemplated: *Provided*, That in case any city of the second class, above described, shall embrace more than one entire school district, and the fractional part of another school district shall extend within the corporate limits of said city, the fractional part so embraced within said corporate limits shall be exempt from the provisions of this act, until such time as a majority of the legal votes [voters] of said fractional part, shall petition the board of education of said city to be included in said district, and upon the receipt of such petition by said board, the said fractional part shall be included within said district, for all purposes of this act.

SEC. 29. (p. 216 of Acts of 1875, being part of same act.) That the board of education may borrow money upon bonds which they are hereby authorized and empowered to issue, bearing a rate of interest not exceeding ten per centum per annum, payable annually or semi-annually, at such place as may be mentioned upon the face of such bonds, which loan shall be paid and reimbursed in a period not exceeding twenty years from the date of such bonds: *Provided*, That no bonds shall be issued unless the said board of education shall first submit the proposition for issuing the same at an election called for such purpose, or at any regular election, notice whereof shall be given for at least ten days in one or more daily papers published within the district, to the qualified voters of said district, and if two-thirds of the ballots polled at such election shall be "for issuing bonds," said board of education may issue bonds in such an amount as shall be named in their election notice. Said election shall be held under the proclamation of the board of education, and in the form and manner as prescribed by law for elections in cities

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The foregoing is a correct copy of those parts of the Constitution and Statutes of Nebraska cited and relied on by counsel on both sides in their briefs, filed in case No. 714, together with a reference to the volume, page and section where the same may be found.

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